

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**EXECUTION APPLICATION NO. 56 OF 2021**

*(Originating from CMA/KLM/MOS/ARB/110/2020)*

**MECKSON SHAYO ..... APPLICANT,**

**VERSUS**

**KKKT DAYOSISI YA KASKAZINI**

**UMOJA LUTHERAN HOSTEL ..... RESPONDENT**

14/7/2022 & 2/8/2022

**RULING**

**MWENEMPAZI, J:**

The applicant herein has applied for an order for execution of a CMA award by way of arrest and detainment of the Manager of Umoja Lutheran Hostel and Compel him to pay to the decree holder the decretal sum of Tanzania shillings Thirty four million, two hundred fifty two thousand five hundred eighty nine only (Tshs. 34,252,589/=).

Way back in 2020 the applicant/decreed holder was terminated from employment by respondent where he was employed as an accountant. He was alleged to have solicited bribe. He denied and was later terminated. He decided to complaint at the CMA upon hearing of the complaint, the CMA awarded the sum he is applying to be settled.

In this application the decree holder has opted for execution by way of arrest and detention of the manager of Umoja Lutheran Hostel. The Respondent Decree debtor however is opposing the application. The counsel for the respondent decree debtor has stated that they were aggrieved with the award, they have filed an application for revision to challenge the same. The said application is registered as Labour Revision No. 27 of 2021. There is also an application for stay of execution Application No. 22 of 2021 which is pending before the Deputy Registrar.

The Respondent has the view that this application has been made maliciously; after all, the manager of Umoja Lutheran Hostels is not the officer responsible for hiring and firing of the Decree Holder's employment. The counsel for the Decree Debtor, one Rebecca Peter has sworn to that effect in the affidavit.

At the hearing the applicant's personal Representative, Mr. Manase Gideon submitted that they are applying to be paid the awarded sum of Tshs. 34,252,589/= (Tanzania shillings Thirty four million, Two hundred fifty two thousands, five hundred eighty nine only). In the submission he has stated that there is no any application for stay of execution. It is the submission by Mr. Manase Gideon that if the Decree Debtor fails to pay then the manager of Umoja Lutheran Hostels should be arrested and detained.

Ms. Rebecca Peter, learned advocate for the respondent has submitted in reply opposing the applicant's prayer. She advances two reasons for opposition. One, that knowing that they are challenging an award through application

for revision of the decision of the CMA, they have filed an application for stay of execution which is Application No. 22 of 2021 and the applicant has been entering appearance. The last appearance was on the 8<sup>th</sup> June, 2022. Two, apart from that there is also an application for revision which is pending in this very court before Hon. Simfukwe Judge. In the respondent's view, this application is an abuse of court process and if has been filed maliciously to harass the manager.

In expending further their arguments, the counsel for the Respondent has submitted that according to the employment of the applicant the manager is his immediate boss and is not in the position to endorse his employment nor his being fired from officer. Under the circumstances she prayed that the application be dismissed with costs.

In rejoinder, the personal representative of the applicant has submitted that the application for stay of execution was found not to be meritorious; thus the file was remitted to the Honourable Judge Incharge for necessary orders.

Also, it is true that there is an application for revision. But no valid application for stay of execution. For the applicant it is argued that it is proper to apply for arrest and detention of the manager because the applicant was reporting to the manager as his immediate boss and that it is the manager who would endorse for the payments. He prayed the application not to be dismissed.

I have gone through the record and also perused application for stay of execution. First, I must find that the personal representative of the applicant did misrepresent the facts. Basically there is a valid application for stay for execution registered as Application No. 22 of 2021. The parties are as herein this application save for the fact that the Respondent is the applicant therein and the applicant herein is the respondent in that applicant. In it the file was remitted to the honourable Judge Incharge on the reasons whereby the application is for arrest and detention, which application is presided over by the judge. It is therefore not true that the application for stay of execution is frivolous as argued.

As to the validity of this application. I think the applicant has misconceived the powers of the officers in the organisation he was employed in.

I do agree with the counsel for the respondent that the manager has no power to hire and fire the applicant and therefore he/she is not a proper authority for the purpose of execution on this application.

It is also my considered view that as the respondents are challenging the award in the Labour Revision No. 27 of 2022 pending before Hon. Judge Simfukwe. It won't be prudent to allow this application knowing certainly that the respondents are disputing the amount.

Under the circumstances however I will deny this application on the reasons that the manager is not the proper authority for execution of the award. The application is therefore dismissed with costs. I have awarded

the costs because I believe the application was unnecessary under the circumstances set forth herein above.

DATED and DELIVERED at Moshi this 2<sup>nd</sup> day of August, 2022.



  
**T. M. MWENEMPAZI**  
**JUDGE**

Ruling delivered in court in the presence of the applicant, in person Mr. Manase Gideon PR for the applicant. Ms. Rebecca Peter, advocate for the Respondent.

  
**T. M. MWENEMPAZI**  
**JUDGE**