

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[IN THE ARUSHA DISTRICT REGISTRY]**

AT ARUSHA

MISC. APPLICATION NO. 3 OF 2021

(C/F Execution No. 90 of 2020 from CMA/ARS/MED/03/2020)

ENERGY DEVICES COMPANY LIMITED.....APPLICANT

VERSUS

ENNE JOSEPH MOSHI & 3 OTHERS.....RESPONDENT

RULING

1st & 15th September, 2022

TIGANGA, J.

This is an application for stay of execution filed to ask this court to stay the execution of the award passed by the CMA in CMA/ARS/MED/03/2020 followed by the application of execution No. 90 of 2020. This application was moved under section 91(3) of the Employment and Labour Relations Act No. 06 of 2004, Rules 24 (1), 24 (2) (a) (b) (c) (d) (e) and (f) 24 (3) (3) (a) (b) (c) (d) and 24 (11) of the Labour Court Rules. GN. 106/2007 and any other enabling provision.

As earlier on pointed out, the order sought in the chamber summons is for stay of execution of the award which was granted ex parte by the Mediator Hon. A. K. Anosisye, till determination of the application to set aside the ex parte award.



The application was supported by the affidavit sworn by Mr. Iddi Msangi, On Advocate who in essence deposed on the historical background of the dispute, the status of the company, but of importance he said that, the award which is subjected of the execution sought to be stayed was passed ex parte and the applicant has already filed Misc. Labour Application No. CMA/ARS/MISC. APPL/46/20 to set aside the ex- parte award and the said application is pending hearing.

At the hearing the applicant was represented by Ms. Fatma Amir, Advocate, who was in the company of Mr. Kassim Mfinanga the liquidator of the Applicant Company. The respondent was not present as the affidavit of the process server show that one Fredrick Urasa received the service for the respondent up to when the case was called for hearing the respondent did not appear.

By the order of this court the hearing proceeded ex-parte.

It should be noted that, the respondent filed the counter affidavit but the one filed was of the 1st respondent the other three respondents did not file their respective counter affidavits. It should also be noted that the 1st respondent filed three points of preliminary objection as contained in the Notice of opposition. These preliminary objection were field on 01/03/2021. However, the respondents have never appeared in court



except on 11/11/2021, when one Maganga, PR, appeared and 24/02/2021 when one Stallon Baraka, also PR, appeared on the behalf.

For all that period, the respondent have not been appearing except in those two dates. That means the respondents did not appear to argue the preliminary objection raised. I have passed through them all and find them to have no merit and substance, therefore the same are dismissed.

Now having resolved the preliminary objection I now turn to the merit of the application. The applicant through the service of Fatma Amir submitted that, the applicant seeks for the order to stay the execution on the ground that.

- (i) The award was issued and granted exparte
- (ii) They have already filed an application to set aside the said award.
- (iii) That, if the application will not be granted the respondent will suffer irreparable loss should the execution be left to proceed against him.
- (iv) That, the applicant has given security for the due performance of the award as may ultimately be binding on him should the appeal fail.



With regard to items (i) – (iii), there is no disputes, and those needs no more explanation as they are self-explanatory.

Regarding to the undertaking he referred this court to paragraph 4 of the affidavit in which the deponent deposed that the applicant promised that, at liquidation, the employee had their entitlement which will be taken care of.

I have considered all the grounds and arguments advanced. I find it to be in the interest of justice to allow the application thereby staying the execution filed to execute the award passed by the CMA ex-parte in CMA/ARS/MED/03/2020 pending hearing and determination of Misc. Application No. CMA/ARS/MISC. APPL/46/2020 filed before the CMA.

Given the nature of the application being labour application no order as to cost is made.

It is accordingly ordered

DATE at ARUSHA, this 15th September, 2022



J. C. TIGANGA

JUDGE