

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)
AT MOROGORO**

MISCELLANEOUS LABOUR APPLICATION NO. 4 OF 2021

MAGOLE AGRICULTURE CO. LTD. APPELLANT

VERSUS

ALLETH NEMBURIS SIARA & 6 OTHERS RESPONDENTS

(Originating from Labour Execution No. 01 of 2021)

RULING

Date of Last Order: 25/03/2022 &
Date of Ruling: 31/03/2022

S.M. KALUNDE, J.:

In this application, **MAGOLE AGRICULTURE CO. LTD** (henceforth "the applicant") is seeking to stay **Labour Execution No. 01 of 2021** which is pending before this Court pending determination of an application for **Revision No. 05 of 2021** also pending before this Court (**Hon Chaba, J**) against the decision of the mediator (**Hon. Kiobya Z.**) of the Commission for Mediation and Arbitration for Morogoro (henceforth "the CMA") in Labour Dispute **No. CMA/MOR/09/2020**. The application is being preferred under



Rules 24(1), 24(2) (a), (b), (c), (d), (e) and (f); 24(3) (a), (b), (c) and (d); and 24(11)(b) of **the Labour Court Rules, G.N. No. 106 of 2007** (henceforth "the Rules") and section 91(3) of **the Employment and Labour Relations Act Cap. 366 R.E. 2019** (henceforth "the Act"). The application is supported by **Mr. Abdullah Ally Mwinyi** the applicant's Principal Officer.

In accordance with the supporting affidavit, the present application has the following historical background: on 03rd August, 2021, whilst visiting the farm he saw a faint Execution Application No. 1 of 2021 pending before this Court. Upon follow-up he noticed that the execution application was meant to execute an exparte order delivered by the mediator (**Hon. Kiobya Z.**) in complaint **No. CMA/MOR/09/2020** on 15th October, 2020 in favour of the respondents. The applicant unsuccessfully applied at the CMA to have the exparte decision set aside. The applicant was aggrieved by the ruling in complaint No. CMA/MOR/09/2020 which had dismissed its application, he filed Revision No. 05 of 2021. He has now approached this Court in an effort to have the execution stayed pending resolution of Labour Revision No. 05 of 2021.

Before me for hearing, were **Mr. George Shayo** and **Mr. Yohana Mgaya** learned advocates for the applicant; for the respondents was **Mr. Kitua Kinja** learned advocate appeared and he was being assisted by **Ms. Matilda Beda**, also learned advocate.

In support of the application Mr. Shayo adopted the affidavit filed in support of the application and went to submit that through Execution Application No. 1 of 2021 pending before this Court the applicants intend to execute a CMA award to the tune of **Tshs. 582,743,984.00**. He contended that the amount involved was so significant, so much that, if the respondents are allowed to execute the said award the pending Revision No. 05 of 2021 will be rendered nugatory. The counsel implored that if the application is granted the applicants will be protected against potential loss should Revision No. 05 of 2021 succeed.

In addition to that the counsel insisted that, on the balance of convenience, Revision No. 05 of 2021 had overwhelming chances of success. He referred the Court to the substance of Revision No. 05 of 2021 which was appended in the affidavit filed in support of the

application. He insisted that the application be granted. To support his position, he cited the decision of this Court in the case of **Mint Master Security Tanzania Limited vs. Kunduchi Beach Hotel & Resort**, Commercial Case No. 79 of 2008 (unreported).

In response, Mr. Kinja admitted to the existence of Revision Application No. 05 of 2021 pending before this Court. However, he was of the view that, in accordance with Order XXI Rule 24(3) of **the Civil Procedure Code Cap. 33 R.E 2019**, for an application for stay of execution to be granted the applicant must provide for security. He then submitted that, should the application be granted, the applicants must be ordered to deposit security. On chances of success, the counsel was of the view that there was no guarantee that Revision Application-No. 05 of 2021 will be successful. He prayed that the applicant be ordered to deposit security.

In a brief rejoinder Mr. Shayo intimated that he was aware of the requirements under Order XXI Rule 24(3) of the CPC. His view was that, in exercise of that discretion, the Court should consider the

economic condition of the applicants so as to avoid curtailing its ability to effectively operate under the current economic conditions.

Having considered the submissions by both parties, for and against the application, I think the remaining question for my determination is whether the present application is merited.

There is no dispute that in terms of the provision of section 91(3) of the Act, the Labour Court has discretionary powers to grant or refuse an application for stay of execution. The respective section reads:

"90. (3) The Labour Court may stay the enforcement of the award pending its decision."

Upon examination of the records, I hasten to find and hold that there is, undeniably, sufficient ground for staying execution in this case pending the determination of Revision Application No. 05 of 2021. To begin with, allegations that the CMA determined the application for condonation when determining preliminary objections is a serious triable issue in the pending application for Revision. I say so because it raises a Constitutional Right of the right to be heard.

That said, I think it would be prudent for the execution of the award to be stayed while the matter is being determined.

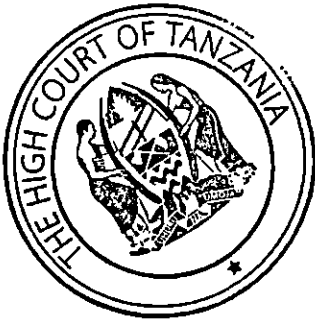
Besides, the balance of convenience tilts in favour of the applicant because if indeed Execution No. 1 of 2021 is executed and it turns out that the mediators award ought to have been reversed the applicants are likely to suffer irreparable loss as they might not be able to likely recover the colossal sums involved or rather there is no guarantee that the applicant would be able to recover the said amount from the respondents. On the contrary, if the application is granted the execution is stayed the respondents would still be in a position to recover from the applicants. Mr. Kinja, himself did not really object to the grant of the application, his insistence was that the applicants be ordered to deposit security in terms of Order XXI Rule 24(3) of the CPC. On the balance of convenience therefore, I am of a considered view that the Tshs. 582,743,984.00 in the pending execution, ought to be paid after the determination of the application for Revision.



Under the circumstances, I grant stay of execution pending the determination of **Revision Application No. 05 of 2021** against the decision of the CMA in Labour Dispute No. CMA/MOR/09/2020.

Order accordingly.

DATED at MOROGORO this 31st day of MARCH, 2022.



S.M. Kalunde
S.M. KALUNDE

JUDGE

ORIGINAL