

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**LABOUR DIVISION**  
**AT ARUSHA**

**MISC. LABOUR APPLICATION NO. 73 OF 2022**

(Original, Dispute No. CMA/ARS/ARS/25/2022/27/2022 in the Commission for  
Mediation and Arbitration at Arusha)

**FRANSALIAN HEKIMA SEMINARY**

**SECONDARY SCHOOL ..... APPLICANT**

**VERSUS**

**BARAKA RUBANGULA .....1<sup>ST</sup> RESPONDENT**

**ERICK VITUS NANJEA .....2<sup>ND</sup> RESPONDENT**

**RULING**

23/02/2023 & 16/03/2023

**KAMUZORA, J**

This application was made under section 94(3) of the Employment and Labour Relations Act, GN No. 2004 and Rule 24 (1), (2)(a)(b)(c) and 28(1) (b) of the Labour Court Rules GN No. 106 of 2007. The Applicant preferred an application for stay of execution of the award issued by the Commission for Mediation and Arbitration (CMA) at Arusha in dispute No. CMA/ARS/ARS/25/2022/27/2022 pending the determination of Labour Revision Application No. 61 of 2022 before this court.

Briefly, the Respondents instituted their claims at the Commission for Mediation and Arbitration against the Applicant. The award was entered in favour of the Respondents. The Respondents then filed an application for execution of the CMA award before this court, Execution No.67 of 2022. It is from that application for execution that the Applicant preferred this application for stay of execution. The application was supported by an affidavit sworn by Sijo John, the director of the Applicant.

The Applicant was ably represented by Mr. Lengai Loita, learned counsel. The application was strongly opposed by a counter affidavit deposed by Stallone Baraka, Respondents' representative.

Hearing of the application was done by way of oral submission and in his submission the Applicant's counsel argued that there is a pending application before this court that is likely to be decided in favour of the Applicant. That, the Applicant is a reputable organisation owning assets and the amount claimed by the Respondents is little as compared to the assets owned by the Respondents hence if the matter will be determined in favour of the Respondents, then they will still be in a position to recover the amount claimed.

The Respondents on the other side replied that the Applicant apart from stating under paragraph 4 of the affidavit that it will suffer an irreparable damage, it has not been able to prove the said damage. Citing the case of **Lomayan Langalame Vs. Christopher Pelo**, Civil Application No. 452/2/2019 which quoted the case of **Mantrac Tz Ltd Vs. Raymond Coaster**, it is the Respondents' submission that it is a trite principle that a person praying for stay of execution should deposit security so that the other party may be protected. The Respondents prayed that this court to issue an order for security.

In a brief rejoinder submission, the Applicant's counsel reiterated his submission in chief and added that there is no need for an order of security as the Applicant is a reputable organisation with fixed assets. The Applicant however distinguished the case cited by the Respondent and stated that in that case the Respondent intended to sell the property to the third party and in the present case there are fixed assets belonging to the Applicant. It is the Applicant's prayer that the application be allowed.

The Labour Court like any other courts of law is empowered by the law under section 94 of the Employment and labour Relations Act No.

2004 to issue an order of stay of execution. However, the same law does not describe the manner and conditions under which execution of the award can be stayed. It is settled in number of cases that, for the application of stay of execution of decree or arbitration award pending the determination of an appeal or application for revision to stand, any or more of the following factors must be established.

*(a) Whether the appeal or application has, prima-facie a likelihood of success.*

*(b) Whether the refusal of staying execution is likely to cause substantial loss which cannot be atoned by any award of damage.*

*(c) The Court will grant a stay if, in its opinion, it would be on a balance of convenience to the parties to do so.*

In the case of **Ignazio Messina & National Shipping Agencies Vs. Willow Investment & Costa Shinganya** Civil Reference No.8 of 1999 (Unreported), the Court of Appeal held that: -

*"It is now settled that,*

*i) The Court will grant a stay of execution if the Applicant can show that refusal to do so would cause substantial irreparable loss to him which cannot be atoned by any award of damage.*

*ii) It is equally settled that the Court will order a stay if refusal to do so would, in the event the intended appeal succeeds, render that success nugatory.*

*iii) Again, the Court will grant a stay if, in its opinion, it would be on a balance of convenience to the parties to do so."*

In **Tanzania Electric Co. Ltd. & Two Others Vs. Independent Power Tanzania Ltd.** Consolidated Civil Applications Nos. 17 and 27 of 1999, the Court of Appeal added another principle when it held that it would grant a stay if demonstrated that the intended appeal has *prima facie* likelihood of success, it is appearing on the face of it that the court handing down the decision being appealed against, lacked jurisdiction to order the award it did.

Thus, the Court in deciding whether to grant or not to grant stay of execution, an Applicant is required to satisfy the Court that the facts and circumstances of his/her case bring that case within the parameter of one or more of those principles, and where he succeeds to do so an application for stay of execution will be granted. In that regard, the duty to prove and demonstrate the existence of factors or circumstances which will justify the grant of an order of stay of execution lies on the Applicant and should be reflected in the affidavit filed in support of the application.

Under paragraph 3 and 4 of the Applicant's affidavit filed in support of the application the Applicant stated that after being aggrieved with

the CMA award he preferred Revision Application No. 61/2022 which is pending before this court. It is again the Applicant's contention that if the application is not granted, he will suffer irreparable damage.

In his submission the Applicants advocate elaborated before this court that, the Applicant being a reputable organisation, owning permanent structures and having nowhere to go will be prejudiced than the Respondents if the application is not granted as there is a pending revision application which may be decided in their favour.

The Respondents on the other side submitted that the Applicant apart from only stating under the affidavit that it will suffer an irreparable damage it has not been able to prove on how the same will be suffered. The Respondents insisted that this court should issue an order for the payment of security in order to ensure that the Respondents may execute the award in case the revision application fails.

There is no dispute that there is a pending revision application challenging the award issued by the CMA. It is however a settled principle that presence of a pending case in itself does not warrant the grant of the order for stay of execution. The Applicant must

demonstrate that there is a real arguable case and facts leading to the success in the pending appeal or revision.

The affidavit supporting the application nothing was deponed to demonstrate the chances of success in the revision application but, that is not the only factor to be relied upon in granting stay of execution. The Applicant he will suffer irreparable injury/loss if the execution is not stayed. Reading annexure B to the Applicant's affidavit, what the Respondents have attached for sale are some of the Applicant's motor vehicles. Although the Applicant has not been able to explain the kind of damage likely to be suffered by selling the said vehicles it is a common understanding that the sale of motor vehicles may weaken business operation of the Applicant. Similarly, upon sale, the likelihood of restoration of the said motor vehicles may be hard thus resulting to irreparable loss.

In my considered opinion, on the the balance of convenience, the Applicant is likely to suffer more than the Respondents if execution is not stayed. I say so because, as the Applicant is a known institution, the Respondent will still be in a position to execute the award if the revision application fails. But it will be difficult for the Applicant to recover the motor vehicles already sold and money distributed to the Respondents

even if the revision application is decided in the Applicant's favour. Thus, for interest of justice, I find it reasonable to allow the application for stay of execution.

It was however insisted by the Respondents' representative that the Applicant should be ordered to deposit security so that it will be easy for the Respondents to execute the award in case the application for revision fails. I understand that security is among the conditions to be met for the grant of stay of execution. The purpose for security was well explained in number of cases and mostly it intends to ensure due performance of the decree by protecting the rights of the decree holder so that he will not find it difficult to realize the decree in case the appeal or revision application fails. Although the Applicant's affidavit contains no undertaking by the Applicant to provide security, I agree with the submission by the Applicant's counsel that, being a school, which is an institution providing education services, in the absence of any fact to the contrary, it is presumed to be a reputable organisation. The amount of award which is TZS 16,020,000/= in anyway cannot be beyond the capacity of the Applicant to pay in case the revision application fails. Since the said revision application is already scheduled for hearing, I find



it reasonable to grant an order staying the execution to allow the parties rights to conclusively determined.

In the upshot and considering all what has been explained above, this application is granted. Considering the nature of dispute being labour dispute I make no order as to cost.

**DATED** at **ARUSHA** this 16<sup>th</sup> day of March 2023



  
**D.C KAMUZORA,**  
**JUDGE**

