

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

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**MISC LABOUR APPLICATION No. 3 OF 2023**

**FRANSALIAN HEKIMA SEMINARY SECONDARY SCHOOL.....APPLICANT**

**VS**

**PERUTH WILLIAM KAHABI.....RESPONDENT**

**RULING**

*Date of last order 15<sup>th</sup> February 2023*

*Date of Ruling 22<sup>nd</sup> March 2023*

**BADE, J.**

This is an application for Stay of Execution made under section 94(3) of the Employment and Labour Relations Act, Cap 366 of 2004, Rule 24(1)(2)(a)(b)(c) and 28(1)(b) of the Labour Court Rules GN. No. 106 of 2007 and any other enabling provisions. The Applicant moved this court by way of chamber summons, affidavit and notice of an application.

Both parties were represented, with the Applicant enjoying the services of Advocate Lengai Loitha and the Respondent represented by Personal Representative Stallone Baraka. The Applicant had the ball rolling submitting that, he takes note of the Respondent not opposed to the Application for stay, nevertheless he understands he has to support the application. He thus

applicant thereto has to furnish security, and that is a well settled position of the law as was the holding in the case of **Lomayan Langaramu vs Christopher Pelo**, Civil Application No. 452/02 of 2018. The Respondent made further reply submission that, the Applicant have to give security for the stay to issue, provided that the court sets reasonable limit to give the said security.

He urges that Court should order the Applicant to furnish security if stay is granted so that if the Respondent wins then his position can be secured.

**Rejoining**, the Counsel for Applicant contends that the Applicant's organization is a reputable organization and it operates within the United Republic of Tanzania. That they won't run away. Nevertheless, the Counsel profess the Applicant's willingness that they will be liable to pay if the Respondent wins, and acquiesces the Court discretion to grant the stay order.

Having heard both parties submit, I see that the issue for determination is whether this application has merit for order of stay to issue.

In labour matters stay of execution is governed by section **89(2) of the Employment and Labour Relations Act** No. 6 of 2004 read together with

*"an order for stay can be given when compelling reasons are shown"*

The Applicant's counsel made a case through the adopted affidavit of the Applicant filed with the application and which is one of the prerequisites for filing applications for Stay, I am satisfied that the Applicant filed the said Application in time, with no inordinate delay.

Meanwhile, the Counsel for the Applicant has shown that the Applicants will suffer a substantial loss which is indeed an irreparable one, since it is contestable that they have already paid the Respondents their dues when they were discharged from employment, which was demonstrated by the signing of the clearance form.

On the other hand, since the Respondent is an individual, it will be hard to recover any monies that might have been collected by Respondent. More importantly, the Applicants are willing to furnish security for the performance of their obligation when they are required to. I, am therefore inclined to agree with the Counsel for the Applicant, that they are justified and have shown compelling reason to have a stay issued, since in any case, the loss whether substantial or otherwise has to be determined on a case by case basis depending on the circumstances of each case. See **Zanzibar**

provided the Court sets a reasonable time limit within which the applicant should give the same"

All factors considered; this Court grants the order of Stay of the said Execution pending the determination of the filed Labour Revision Application No. 71/2020. The order is conditional of a deposit of an original title deed of the Applicant or of a Guarantor thereto, within 21 days of issuance of this order.

Costs should be stayed and follow the result of the intended Labour Revision.

**DATED** at **ARUSHA** on the 22<sup>nd</sup> March 2023

It is so Ordered.



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**A. Z. Bade**  
**Judge**  
**22/03/2023**

Ruling delivered in the present of parties / their representatives on **22nd** day of **March 2023**



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**A. Z. Bade**  
**Judge**  
**22/03/2023**

