

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT MOROGORO

MISCELLANEOUS LABOUR APPLICATION NO. 12 OF 2023

(Arising from Revision No. 17 of 2021 Before Hon. Chaba, J.)

BETWEEN

THE REGISTERED TRUSTEES OF SEVENTH

DAY ADVENTIST CHURCH.....1ST APPLICANT

BOARD OF UFUNUO PUBLISHING HOUSE..... 2ND APPLICANT

VERSUS

YONA MSOMI1ST RESPONDENT

JOHN CHAGONJA.....2ND RESPONDENT

RULING

19th July, 2023

CHABA, J.

On 6th July, 2023, the applicants herein jointly and severally filed the instant application seeking for an order from this Court to stay the proceedings in Revision No. 17 of 2021 of which the matter is before me pending for the hearing and determination of another matter involving similar parties registered and marked as Review No .1 of 2023 which is also before me.

The application has been brought in Court by way of Notice of Application and Chamber Summons made under Rule 24 (1), 2 (a), (b), (c), (d), (f), (3), (11) (b); Rule 55 (1) of the Labour Court Rules GN No. 106 of 2007 read

together with section 68 (e) and section 95 all of the Civil Procedure Code, [CAP. 33, R. E, 2019]. It is supported by an affidavit deposed by Pius Mataba, the Principal Officer of the applicants.

Before venturing into the merits of this application, I feel compelled to narrate albeit, briefly the historical background of the present application as gleaned from the Courts records. It goes like this: The Respondents in this matter were employed by the applicants but their employment was terminated due to allegedly theft. Aggrieved by the impugned termination, each of them lodged a dispute at the CMA which were consolidated vide Labour Dispute No. CMA/MOR/75 & 76 of 2019. After a full hearing, the CMA passed an award in favour of the respondents, and declared that their terminations were unfair and thereafter proceeded to grant the respondents with the reliefs. However, both parties were unhappy with the award issued by the CMA, hence the applicants herein lodged an Application for Revision before this Court against the decision of the CMA vide Labour Revision No. 17 of 2021, whereas the respondents also knocked the door of this Court similarly challenging the impugned award vide Labour Revision No. 19 of 2021.

It is on record that, being a trial Judge, I had an opportunity to hear and determine an Application for Labour Revision No. 19 of 2021 and on 12th day of December, 2022 I adjudicated the matter in favour of the respondents, whereas an Application for Labour Revision No. 17 of 2021 was and in fact is still pending before this Court for determination.

Discontented with my decision in the former Application for Revision, the respondents made oral application before me seeking for a proper interpretation of the orders issued by this court, basing on the point that the same were un-executable. I had no other option other than making a formal assessment of my decision with the intention of instituting changes, technically known as "review" as suggested by the respondents herein/applicants. On the basis of my orders dated 2nd day of June, 2023 reviewing my orders dated 12th December, 2022, the applicants herein who on 13th June 2023 filed a review matter registered as REVIEW NO. 1 OF 2013 intending to challenge my decision dated 2/06/2023 have come before this Court vide the instant Misc. Application No. 12 of 2023 seeking for orders to stay the proceedings in Labour Revision No. 17 of 2021 pending hearing and determination of Labour Review No. 1 of 2023.

When the matter was called on for mention before me for the first time on 19th July, 2023 Mr. Isaac Nassor Tasinga, the learned advocate entered appearance for the applicants and briefly submitted that he duly served the respondents with the instant application early in the morning (19/07/2023) through the counsel for the respondents. On his side, the learned counsel for the respondents on behalf of his clients (who also appeared in persons) admitted the fact that he was duly served with the notice of representation, notice of application and chamber summons supported by an affidavit sworn by Pius Mataba, the Principal Officer of the Applicant and other relevant

documents. At the outset, Mr. Mwanri did not seek to challenge this application, and so right away informed the Court to that effect and asked the Court to grant the prayers sought by the applicants.

In reply, Mr. Isaack Tasinga, the learned advocate for the applicants, submitted that, since the counsel for the respondents conceded to the application, he prayed the Court to grant the application as prayed.

Having heard the counsel for the parties and upon perusing the affidavit of the applicants which supports the application for stay of proceedings, I have noted that the reasons advanced by the applicants which are the bases for applying for orders to stay proceedings in Revision No. 17 of 2021 are averred under paragraphs 10 to 14 of the affidavit. In my view, even though the application is unopposed, the main issue for consideration and determination is whether or not the present application has merits.

To determine the above issue, I find it pertinent to borrow a leaf from the definition of the phrase "stay of proceeding" as it was expounded in the Malawian case in the case of **Mulli Brother Ltd Vs. Malawi Savings Bank Ltd, (48 of 2014) [2015] MWSC 467**, which was quoted with approval in the case of **Yahya Khamis Vs. Hamida Haji Idd & Others (Civil Appeal No. 225 of 2018) [2019] TZCA 116 (16 May 2019)**, where, the Supreme Court of Malawi described the term as follows:

"As we understand it, a stay is the act of temporarily stopping a judicial proceeding through the order of a court. It is a

suspension of a case or a suspension of a particular proceeding within a case. A judge may grant a stay on the motion of a party to the case or issue a stay sua sponte, without the request of a party. Courts will grant a stay in a case when it is necessary to secure the rights of a party".

The Court went on stating that:

*"However, a stay of proceedings is the stoppage of an entire case or a specific proceeding within a case. This type of stay is used to postpone a case until a party complies with a court order or procedure. For instance, if a party is required to deposit collateral with the court before a case begins, the court may order the proceedings stayed for a certain period of time until the money or property is delivered to the court. Further, a court may stay a proceeding for a number of reasons. **One common reason is that another action is under way that may affect the case or the rights of the parties in the case...***

" (Emphasis Added).

Guided by the Court's authorities, I hasten to agree with both counsels for the parties that this application has merits. In the premises, I invoke inherent power bestowed upon me under the provision of Section 95 of the CPC and proceed to order for stay of the proceedings in Revision No. 17 of 2021

until final determination of the matter registered as Review No. 1 of 2023 which is pending before this Court for hearing and determination. It so ordered.

DATED at MOROGORO this 19th day of July, 2023.


M. J. CHABA

JUDGE

19/07/2023

Court:

Ruling delivered under my hand and seal of the Court, this 19th July, 2023, in the presence of Mr. Isaac Nassor Tasinga, the Learned Advocate for the applicants, and in the presence of the Respondents and their Advocate Mr. Isaya Mwanri.




M. J. CHABA

JUDGE

19/07/2023