

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

**DAR ES SALAAM DISTRICT REGISTRY**

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 528 OF 2023**

*(Arising from the Decision of the District Court of Temeke in Civil Appeal No. 28 of 2022 dated 25<sup>th</sup> May, 2023, Originated from Mbagala Primary Court in Civil Case No. 385 of 2020 by Hon. S.A. Mwakyosi-RM dated 11<sup>th</sup> April, 2022)*

**BETWEEN**

**JASSIE & CO. LTD (JASCO)..... JUDGMENT DEBTOR/APPLICANT**

**VERSUS**

**MUNGIA SECURITY SYSTEM..... DECREE HOLDER/RESPONDENT**

**RULING**

***Date of last order: 25/10/2023***

***Date of ruling: 03/11/2023***

**A.A. MBAGWA J.**

This ruling is in respect of application for stay of execution. Through a chamber summons made under Order XXI Rule 24(1) and Section 95 of the Civil Procedure Code, the applicant has moved the court praying for the following orders;



- a) That this Honourable Court be pleased to stay execution of the decree in Civil Case No. 385 of 2020 issued by the Primary Court of Mbagala pending determination of Revision in the High Court.
- b) Costs of the application be provided for.
- c) Any other relief (s) this Honourable Court may deem just and fit to grant.

The application is backed up by an affidavit sworn by Mr. Ruta Bilakwata, the applicant's learned counsel. On the adversary, the respondent did not file counter affidavit despite being duly served.

According to the facts as gathered from the applicant's affidavit, this matter originates from Mbagala Primary Court in Civil Case No. 385 of 2020 which was adjudged in favour of the respondent/decree holder. Dissatisfied with the Primary Court decision, the applicant appealed to the District Court of Temeke via Civil Appeal No. 28 of 2022. However, his appeal was unsuccessful as the District Court upheld the trial Primary Court's decision. Still undaunted, the applicant has knocked the doors of this Court by way of revision to wit, Civil Application No. 413 of 2023 to challenge the two lower courts' decisions. In the meantime, the applicant has filed the application at hand to stay the execution pending

determination of the revision application as the respondent has commenced execution process.

On the hearing day i.e., on 25<sup>th</sup> October, 2023, Mr. Ondijo Sylvanus Leonard, learned advocate appeared for the applicant whereas the respondent was represented by Mr. Christopher Mbuya, learned advocate. As the respondent had not filed counter affidavit, the respondent's counsel was allowed only to submit on matters of law.

Submitting in support of the application, Mr. Ondijo Sylvanus Leonard, at the outset, adopted the affidavit sworn by Ruta Bilakwata to form part of his submission. He then prayed the Court to stay the execution of decree in respect to Civil Case No. 385 of 2020 pending determination of revision in Civil Application No. 413 of 2023 before Kirekiano J in this Court. The applicant's counsel clarified that the revision seeks to challenge the decision of the District Court of Temeke in Civil Appeal No. 28 of 2022.. In addition, the applicant's counsel lamented that the applicant will suffer irreparable loss in the event this application is refused. He also argued that the pending revision will be rendered nugatory if the stay is not granted. On that note, the applicant's counsel referred this Court to the case of **Velisas Elizabeth Deflosse Ingleton (Legal representative**



**under the power of attorney of Gordon McClymont) vs Gautam Jayram Chavda and Another**, Misc. Civil Application No. 204 of 2022, HC at Dar es Salaam and the case of **Serengeti Breweries Limited vs Joseph Maige Mashauri**, Civil Application No. 271/05 of 2019, CAT at Moshi. Finally, the applicant's counsel beseeched the Court to allow the application and grant the orders prayed in the chamber summons.

In reply, Mr. Christopher Mbuya, the respondent's counsel had nothing to comment on matters of law taking into account that the respondent did not file counter affidavit to contest the application.

I have keenly gone through the application documents namely, chamber summons and affidavit. I have also considered the submissions by both counsel. It is undisputed that there is a pending revision in this Court to wit, Civil Application No. 413 of 2023 before Kirekiano J which is meant to challenge the judgment whose decree is about to be executed. In the premises, I am opined that the application is merited. In terms of Order XXI Rule 27 of the Civil Procedure Code, I consequently, allow the application. Accordingly, the execution of decree in Civil Case No. 385 of 2020 is hereby stayed pending determination of Civil Application No. 413 of 2023. Each party should bear its own costs.



It is so ordered.



**A. A. Mbagwa**

**JUDGE**

**03/11/2023**

