

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MWANZA SUB-REGISTRY
AT MWANZA**

MISC. LABOUR APPLICATION NO. 26179 OF 2023

*(Arising from the award and ruling of the Commission for Mediation and Arbitration at Mwanza in
CMC/MZA/NYAM/144/2021)*

LAKE OIL LIMITED..... APPLICANT

VERSUS

KHERDIN MOHAMED SHAFIQ..... RESPONDENT

RULING

7th & 15th March, 2024

ITEMBA, J.

Before me is an application for stay of execution pending determination of Miscellaneous Civil Application 26104/2023 which is pending before this court. The application is supported by an affidavit of Kasamajera Alphonse Kasasila the principal officer of the applicant while it was opposed by the counter affidavit sworn by the respondent. When the matter came for hearing, the applicant was represented by Ms. Rosemary Makori while the respondent was represented by Mr. Akram Adam, both learned advocates.

Ms. Makori submitted that, they are applying for stay of execution pending an application for extension of time to file Revision application against the award issued by the Commission for Mediation and Arbitration for Mwanza (CMA). That, the respondent filed his application at CMA which

was heard *ex parte* and a decision was issued. The applicant learnt of the decision after being served with the application for execution. He successfully applied for stay of execution before this court and he was granted. He then applied to set aside the *ex parte* award but the application was dismissed by CMA. That, they intend to resort to revision but being time barred they have made an application to this court for extension of time to file revision.

That they have noted the respondent intends to proceed with execution hence this application. She went further that, the conditions for granting execution are; **one**, where loss will occur to one of the parties; **two**, when the application was made without unreasonable delay; and **three**, when security has been given by the applicant. That, regarding the first condition, if stay of execution will not be granted, the applicant will suffer loss because the current source of income and place of residence of respondent is unknown to the applicant. That, in the event that the award is executed and the revision application is decided in favor of the applicant the applicant will not be able to benefit from the award. I was referred to the case of **Tanzania Breweries Ltd. v Antony Nyingi** Civil Application no.12/2014, Court of Appeal, Mwanza.

Regarding the second and thirds conditions, he contended that, after filing the application for extension of time, they have filed this application at the same time. Further, the applicant is ready to give any security for due performance, as it will be ordered by court as stated in the case of **National Bank of Commerce Ltd. v Alfred Mwita**, Civil Application no. 172/2015, CAT (unreported). Therefore, she prays for the application to be granted.

In reply Mr. Adam submitted that, for any stay of execution to be granted, there must be a pending appeal or in our case revision. That, there is no pending revision application against the award. Further that, the application cannot be granted pending application for extension of time. I was referred to the case of **Willo Investment v Mbombo Mtumba and 2 others** (1997) TLR 93 to the effect that, stay will not be granted where an appeal requires leave or certificate on point of law or enlargement of time to be able to proceed. That, the applicant is applying for stay of execution pending application for extension of time, to challenge the award but the award has not been challenged yet. That, the matter before the CMA proceeded inter parte with fully representation therefore it is not true that it was heard ex parte. That the application tends to delay execution which is already late by one year four months. The attachment was done by this court

and it is still pending to date. That, the respondent has a known place of residence, fixed place of abode in Mwanza, and can be located through the legal representation.

That, the applicant will suffer no loss because the respondent asked the court to attach fuel pump located only at a single petrol station. That, the applicant has several petrol stations doing business all over the country and no loss will be incurred. Regarding the issue of security, he agrees that the court can issue the order for cost but it should be done only when the award for execution is already challenged. But at the moment, the award is not challenged. He thus prayed for the appeal to be dismissed.

In rejoinder, Ms. Makori reiterated the submission in chief with addition that, the cited case does not relate with the present case as there is no application for leave of certificate of point of law required.

I have keenly considered the submissions of both parties. The gist of this application is to stay the execution of the award of the CMA pending an application for extension of time. To the applicant, stay is necessary because the applicant is a going concern and she can deposit security if ordered by the court. That, the respondent's residence and source of income is unknown

therefore if execution proceeds, the respondent will not be in a position to refund the applicant. On other part, the respondent's counsel is of the view that, there is no revision application but an application for extension of time and that, the respondent's residence is known and he can also be reached through his legal representative.

I will start with the contention that there is no pending revision application. Under Section 91 (3) of the **Employment and Labour Relations Act**, Cap 366 R. E 2019, this court is empowered to stay execution pending determination of revision application from CMA. In the cited case of **Willo Investment v Mbombo Mtumba and 2 others (supra)** the court of appeal inter alia held;

*"It is apparent from the record that this application was filed in this court on 21 February 1997, that is, a day after the time for seeking leave to appeal, expired. As already mentioned, **no move has been made up to now to seek such leave. In the light of this state of affairs, I am fully satisfied that as matters stand at present, this application is incompetent and cannot be heard.**"*

Therefore, in my view, as correctly argued by Mr. Adam, the legal position is that stay of execution cannot be granted when there is no move to process the appeal or applying for leave or certificate on point of law. In this matter, the applicant has filed an application for extension of time which if granted, it may lead to an appeal; therefore, he has initiated a necessary step towards a revision application.

Further under Rule 55 (1) of Labor Court Rules, GN. No. 106 of 2007, this court is empowered to adopt procedures according to the circumstances of the case. It reads;

*"Where a situation arises in proceedings or **contemplated proceedings** which these rules do not provide, the Court may adopt any procedure that it deems appropriate in the circumstances"*
(emphasis added)

Therefore, in my view, because there is pending application for extension of time and anticipated revision proceedings, this court has power to grant an application for extension of time.

Regarding the merit of this application, as correctly argued by parties, three conditions for stay of execution must be cumulatively met. Stay of

execution is granted to avoid irreparable loss to the applicant, the application should have been made without delay and security has to be given by the applicant. See the case of **Farida Hamza (the Administratrix of Hamza Adam) vs Geoffrey Kabaka**, Civil Application No. 33 of 2015, **Razak Mahmoud Hussein (Represented by his Attorney Mohamed Salumu Mohamed) vs sultan Ali Abdulla Gulamhussein**, Civil Application No. 426/15 of 2018 (both unreported).

In this matter at hand, as submitted for the respondent, the attached property is fuel pump in one of the petrol stations owned by the applicant. Indeed, the said fuel pumps are used on daily business. Therefore, if stay of execution is not granted, the applicant may suffer irreparable loss which cannot be atoned by money. This application was also filed promptly after filing an application for extension of time. The applicant had deposited security to this court when granted with the previous order for stay of execution and they are ready to deposit another security is ordered by the court. In the attached CMA award, I have noted that the decretal sum in total, is TZS 89,106,666/=. Therefore, in my view, all conditions for stay of execution have been cumulatively met by the applicant.

In the upshot, I grant the application. I make an order for stay of execution pending hearing and determination of an application for extension of time which is before this court. The order is conditional upon the applicant depositing the bank guarantee covering the entire decretal sum within thirty (30) days of delivery of this ruling. This being labour matter, I order no costs.

It is so ordered.

DATED at **MWANZA** this **15th Day** of March, 2024.



**L. J. ITEMBA
JUDGE**

Ruling delivered under my hand and seal of the court, via audio conference, in the presence of Ms. Rosemary Makori and Mr. Acram Adam, learned counsels for the applicant and respondent respectively, ad Ms. G. Mjari, RMA.

**L. J. ITEMBA
JUDGE**