

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

MISCELLANEOUS CIVIL APPLICATION NO. 000002587 OF 2024

BETWEEN

EXIM BANK (TANZANIA) LIMITED..... APPLICANT

VERSUS

HUMPHREY MAHEMBE..... RESPONDENT

RULING

Date of last Order: 13/03/2024

Date of Ruling: 20/03/2024

MLYAMBINA, J.

In this ruling the Court is called upon to determine among other issues; *whether the labour Court Judge has jurisdiction to determine an application for extension of time to file stay of execution application.* The issue arises out of the preliminary objections raised by the Respondent's Counsel challenging an application for extension of time to file application for stay of execution. Generally, the preliminary objections at hand are as follows:

- i. The application is defective for non-citation of the mandatory enabling provisions of the law to move the Court.
- ii. The Applicant's brought omnibus application which contains two prayers made up from different provisions of the law which were

supposed to be determined by a registrar and the second one to be determined by a Judge.

As regards the first objection, Mr. Peter Ngowi for the Respondent argued that one of the prayers is for extension of time to file stay of execution. He faulted the Applicants for failure to cite *Rule 56 of the Labour Cour Rules, GN. No, 106 of 2007* (herein GN. No. 106/2007) which is mandatory provision for extension. Thus, non-citation of that provision makes this application defective.

In response to the first objection, Ms. Fatuma Mgunya for the Applicant submitted that the application has been brought properly under *Section 14 (1) of the Law of Limitation Act [Cap 89 R.E. 2019]* (herein LLA) which is the enabling provision. She argued that *Rule 56 (1) of the GN No. 106/2007* provides for extension of time for any period prescribed by the Rules. Whereas, before the Court is an application for extension of time to file stay of execution. She stated that the stay of execution is provided under *Section 91 of the Employment and Labour Relations Act [Cap 366 R. E. 2019]* (herein ELRA) and the time limit for filing stay of execution is provided under *Part III Item 21 of the Schedule of LLA* which provides that any application which the period of limitation is not provided under the Act or any written law is 60 days.

It was further argued by Ms. Mgunya that the 60 days have not been provided under the Labour Court Rules. Therefore, *Rule 56(1) (supra)* is not applicable in the present application.

In rejoinder, Mr. Ngowi added that the amendment cited there is no where the Judges have been given powers of entertaining execution or stay of execution.

I have dully considered both parties arguments. *Rule 56 of the GN. No. 106/2007* provides as follows:

Rule 56(1) The Court may extend or abridge any period prescribed by these Rules on application and on good cause shown, unless the Court is precluded from doing so by any written law.

(2) Where a party fails to comply with any notice or direction given subject to the provisions of these Rules, any interested party may apply on notice for an order that the notice or directive be complied with within a period that may be specified, and that failure to comply with the order, the party in default will not be entitled to any relief in the proceedings.

(3) The Court may, on good cause shown, condone non-compliance with the period prescribed by the Court.

It was Ms. Mgunya's arguments that the above provision is applicable in applications for extension of time provided by the *Rules (GN. No 106/2007)*.

As rightly argued by Ms. Mgunya, the wordings of the above provision are clear. It is applicable to time limitation provided by the Rules in question. However, the time limit for filing an application for stay of execution is not provided by the Rules as correctly submitted by Ms. Mgunya. In the circumstances not provided under *GN. No 106/2007*, the Court is empowered to adopt any procedure it deems appropriate. This is in terms of *Rule 55(1) of GN. No 106/2007* which provides as follows:

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 circumstance.

In line with the above cited provision, the Applicant cited *Section 14(1) of the LLA* as an enabling provision which empowers the Court to grant extension sought. *Section 14 (1) of the LLA (supra)* as follows:

Notwithstanding the provisions of this Act, the Court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the extension may be made

either before or after the expiry of the period of limitation prescribed for such appeal or application.

After going through the above quoted provisions, it is perhaps worth articulating *Rule 55 (1) (supra)* a little more. It is my view that *Rule 55(1) (supra)* is applicable in various circumstances. *First*, the provision is applicable in application of other laws apart from the labour laws. *Secondly*, to the circumstance provided by other labour laws apart from *GN. No 106/2007*, *Third*, the provision may also be applicable to the procedure provided by *GN. No 106/2007* preferred to be adopted by the Court in the various circumstances. Therefore, in the application at hand, though the Rules do not provide for extension of time to file application for stay of execution, the provision of *Section 91(3) of the ELRA, Rule 55 and 56 of GN No. 106/2007* automatically empowers the Court to grant extension of time to file the application in question.

Furthermore, even *Section 14(1) of LLA* is not a specific provision for extension of time. It is a general provision for granting extension of time to the circumstances not provided by any other written law.

In the premises, it is my view that in an application for extension of time to file stay of execution, *Section 91(3) of the ELRA, Rule 55 and 56 of*

GN No. 106/2007 suffice the Court to grant the order sought. Therefore, the first preliminary objection is found to have merit.

Turning to the second preliminary objection, Mr. Ngowi argued that the Applicant brought omnibus application which contains two prayers made up from different provisions of the law. One prayer was supposed to be determined by a Registrar, whereas the second one was to be determined by a Judge. Mr. Ngowi strongly maintained that the prayers are interrelated. The prayer for extension of time was supposed to be under *Rule 56 of GN. No. 106/2007* and the interim orders of stay of execution was supposed to be brought under *Order XXI Rule 24 of the Civil Procedure Code [Cap 33 Revised Edition 2019]* (herein the CPC). He maintained that the prayers are untenable because are not related. In support of his submission, he cited the Court of Appeal decision in the case of **Kija Redio v. TTCL**, Civil Application No. 17/13 of 2022, Court of Appeal of Tanzania at Iringa (unreported) at p. 8. He therefore urged the Court to struck out this application.

In reply, Ms. Mgunya stated that the prayers under the present application are interconnected and not interrelated because the amendment which has empowered the Registrar to entertain stay of

execution, did not take away powers of the Judge to entertain stay of execution.

She added that Judges and Deputy Registrar have concurrent jurisdiction to determine stay of execution. Thus, they have jurisdiction to entertain both prayers. To strengthen her position, Mr. Ngowi put reliance of his submission to the case of **MIC Tanzania Ltd v. The Minister for Labour and Youth Development and Attorney General**, Civil Appeal No. 103 of 2004, Court of Appeal of Tanzania at Dar es Salaam (unreported), pp. 8-9 that Court of law harbour multiplicity of proceedings.

It was further argued by Ms. Mgunya that where there will be multiplicity of cases, the parties will find themselves wasting more time and money on avoidable applications which would have been conveniently combined. She said, looking at this application, it is brought under *Section 91 (3) of ELRA* and *Section 14 (1) of the LLA* as there is no law which provides for extension of time to file stay of execution. She therefore argued that it cannot be said that the application has been brought under different provisions. She maintained that the cited provisions are the enabling provisions to move the Court.

She further contended that the case cited by the Respondent's Counsel is distinguishable in these circumstances. In the present case there

is no enabling provision under labour law which provides for extension of time to file stay of execution.

In addition to the second preliminary objection, Ms. Bachuba argued that the jurisdiction of this Court to grant interim order for stay pending determination for application for stay of execution, the powers are provided under *Section 91(3) of ELRA*. She stated that the Court was defined to exclude the Deputy Registrar of the Labour Court. Thereafter, came *the amendment of the Labour Institutions Act*. It was *Section 50* which added Deputy Registrar as part of the Court.

She added that *Section 50 (supra)* amended *Section 54 of the LIA* which was repealed and replaced by *Section 54* by adding powers granted under *Order LXIII (43)* under which they have powers to stay execution. It was her view that this amendment did not remove the Judges Powers to grant stay.

Ms. Mgunya added that the cited case is distinguishable because the prayers were one to be determined by the single Judge and others by a panel. Thus, the circumstances are different. As in the **MIC case**, she stated that the prayers are interrelated.

I have noted Mr. Ngowi's argument that the application is omnibus as it contains two prayers made up from different provisions of the law which

were supposed to be determined by a Deputy Registrar and the second one to be determined by a Judge. That the application for stay of execution is determined by a Registrar and an application for extension of time to file application for stay of execution is determined by a Judge. Both counsel are at one position that the application for stay of execution is determined by the Deputy Registrar. Indeed, that is the position of the law. The Registrar being part of the Court he/she is an Officer with jurisdiction to entertain all matters relating to execution.

It is worth perhaps briefly describing the point in issue. Before *The Written Laws (Miscellaneous Amendments) (No. 2) Act No. 3 of 2020*, Deputy Registrars were not part of the constitution of the High Court Labour Division. This is also stated in the case of **Serenity on the Lake Ltd v. Dorcus Martin Nyanda**, Civil Revision No. 1 of 2019, Court of Appeal of Tanzania, Mwanza (unreported).

However, the definition of the Labour Court under *section 4 of the ELRA and section 2 of the LIA* refers to the Labour Division of the High Court established under *section 50 of the Labour Institutions Act, 2004*. *Section 50 of the Labour Institutions Act, 2004* as amended in 2020 establishes the Labour Division of the High Court to be constituted by the Judge with an option of assessors. It also recognizes Deputy Registrar as

part of the Labour Court. Therefore, that position has been set at rest by *The Written Laws (Miscellaneous Amendments) (No. 2) Act No. 3 of 2020* vide section 67 which added paragraph (b) to section 50(2) which now recognizes the Deputy Registrars as part of the High Court constitution. Further, vide section 68 of the amendment, section 54 of the *Labour Institutions Act, Cap 300* was repealed and replaced with the following:

There shall be Deputy Registrars who shall exercise powers and perform such duties as are conferred under (a) N/A (b) *Order XLIII of the Civil Procedure Code*; and (c) Rules made by the Chief Justice under section 55.

From the afore amendment, it is clear that the Deputy Registrars are part of the Labour Court and their powers are clearly exercised under *Order XLIII of the Civil Procedure Code [Cap 33 Revised edition 2019]*. Therefore, the decision of Deputy Registrar of the Labour Court has the same status from that of the Deputy Registrar of the High Court Sub Registry or any Division of the High Court as they both derive powers from *Order XLIII of the Civil Procedure Code*. But such powers do not turn them to be Judges of the Labour Court. This is also the Court's position in the case of **Yakobo John Masanja v. MIC Tanzania Limited**, Labour Revision Application No. 385 of 2022, High Court Labour Division at Dar es Salaam (unreported).

With due respect to Ms. Bachuba's argument that the amendment did not remove the Judges powers to grant stay, it is my view that since the amendment well explained the powers of the Deputy Registrars which *inter alia* includes granting an application for stay of execution, then automatically Judges are seized with the powers to determine the contested application.

Again, in the case of **Total T Limited v. Godlever Massawe**, Execution No. 405 of 2009, High Court of Tanzania Labour Division at Dar es Salaam (unreported), the Court was of the following opinion at p.5 of its decision:

While it is the legal position that CMA decisions are executed by this as Court decrees, and in execution of such decrees the Registrar proceeds under the provisions of *Order XXI of the CPC* as provided for under *rule 48 and 99 of the Labour Court Rules. Section 38 of the CPC* empowers the executing Court to determine all questions arising between the parties in the suit in which the decree was passed. The resultant decision is a Court decree, which in my opinion, appeal able.

Furthermore, the cited *Section 38 (1) of the Civil Procedure Code (supra)* provides as follows:

All questions arising between the parties to the suit in which the decree was passed, or their representative, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

In line with the above provision, since the powers to determine matters relating to execution of a decree is vested to the Deputy Registrar, it is my view that, such powers extend to the grant of extension of time to file application for stay of execution.

Therefore, the application at hand is not only omnibus but it is incompetent for being filed before a Judge while the same ought to have been filed before the Deputy Registrar. I am aware that in some cases the application of extension of time to file stay of execution have been determined by Labour Court Judges. These decisions include the case of **Access Bank Tanzania Limited v. Mwigulu Nchila & Another**, Misc. Labour 02 of 2022, High Court Labour Division at Mbeya (unreported) and the case of **Geita Gold Mining Limited v. Christian Christopher**, Misc. Labour Application No. 34 of 2021, High Court Labour Division at Mbeya (unreported). However, for the reasons stated above, it is my firm position that applications of extension of time to file stay of execution be

determined by Deputy Registrars. Such move will also enhance speed administration of justice.

In the result, the present application is found incompetent, and it is hereby struck out from the Court's Registry.

It so ordered.



Y.J. MLYAMBINA

JUDGE

20/03/2024

Ruling delivered and dated 20th March, 2024 in the presence of Counsel Fatuma Mgunya for the Applicant and the Respondent in person.

Right of Appeal explained.



Y.J. MLYAMBINA

JUDGE

20/03/2024