

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

MISC. LABOUR APPLICATION NO. 33 OF 2021

(Arising from Execution No. 40 /2020, Original CMA/ARS/MED/564/2019)

CLASSIC TOURS SAFARI LIMITED APPLICANT

Versus

CHARLES GEORGE USANGILA1ST RESPONDENT

NUTMEG AUCTIONEERS &

PROPERTY MANAGERS 2ND RESPONDENT

RULING

02/09/2021 & 21/10/2021

KAMUZORA, J;

An application for stay of execution was preferred under the provision of Rule 24 (1), (2)(a) to (f), 24 (3)(a) to (d) and 24(11) of the Labour Court Rules, 200 GN No. 106 of 2007 and section 91 (3) of the Employment and Labour Relations Act, 2004, Act No. 6 of 2004. The applicant in this application is praying for stay of execution of a decree pending the determination of an application to set aside an ex-parte award at the CMA filed by the applicant via CMA/ARS/ARS/Misc. Application 07/2021. The applicant **Classic Tour Safari Limited** is ably represented by Mr. Edmund Rweyemamu Ngemela, the learned counsel and Charles George Usangila the 1st Respondent is represented by Cyprian Herbert Mwaimu, the learned counsel. However, the 2nd

respondent did not enter appearance on this application for reasons best known to himself.

A brief background of the matter arose from a claim filed in the Commission for Mediation and Arbitration (herein to be referred to as the CMA) vide Labour Dispute No. CMA/ARS/ARS/564/2019. The 1st respondent claimed for unfair termination by the applicant and the claim was heard ex-parte against the applicant. CMA made an order for the applicant to pay the 1st respondent a total amount of Tshs 4,508,000/=.

The applicant claimed to have filed the application to set aside the ex-parte award and then brought this application praying for stay of execution pending hearing and determination of the application before the CMA. This application is supported by an affidavit sworn by Edmund Rweyemamu Ngemela, the counsel for the applicant. The counsel for the parties opted to argue the application by way of written submissions.

I have ardently gone through the records and arguments for and against the application. Despite discovery of contradiction in the prayers sought in the chamber summons as it seems to suggest prayer for injunction and at the same time stay of execution, the records and the submission by the parties have led this court come to a settled mind that the pertinent prayer is stay of execution. Thus, the issue to be discussed here is whether the applicant has cumulatively satisfied the conditions for grant of an order for stay of execution.

The applicant's application was made under Rule 24(1),24(2)(a) to(f) and 24(3)(a) to(d), 24(11) of the Labour Court Rules, 200 GN No. 106/2007 and section 91(3) of the Employment and Labour Relations Act, 2004 Act No 6/2004. The cited Labour Court Rules provides for the

manner under which the application before this court has to be made that is, by notice with a chamber summons supported by an affidavit. Section 91(3) under the Employment and Labour Relations Act (supra) vests this court with powers to stay execution of the award pending its decision. The section reads;

" The labour Court may stay the enforcement of the award pending its decision."

The labour laws have no any specific provision that gives the requirements to be met prior to the grant of an order for stay of execution. Since there is a lacuna then this court in reaching its decision will be guided by Order XXXIX Rule 5 sub rule 1 to 3 of the Civil Procedure Code Cap 33 R.E 2019 which provides for the prerequisite conditions for the grant of an order staying execution of any award or decree. The said order is here by reproduced for easy reference,

5.-(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree but the Court may, for sufficient cause, order the stay of execution of such decree.

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the court which passed the decree may, on sufficient cause shown, order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the High Court or the court making it is satisfied that-

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

Apart from the above provision, I also revisited the records and the submissions by the counsel for the parties. The chamber application shows that, the applicant is praying for this court to stay an order for execution in Application No. 40 of 2020 originating from CMA/ARJ/56/564/2019. However, the execution application attached with the application is Execution No. 80 of 2020. The counsel for 1st respondent in his counter affidavit opposing the application raised an issue under paragraph 4 on the existence of Execution order No. 40/2020. The counsel for the defendant deponed that, there was no any application between the parties registered as Execution No.40 of 2020 either before the CMA or before this court.

The records show that, the applicant has attached an application and a notice of mention in relation to Execution No. 80/2020 as opposed to Execution No. 40/2020 which is sought to be stayed. In his submission in support of the application, the counsel for the applicant

moved this court to issue an order for stay of Execution No. 40/2020. On the other side, the counsel for the 1st respondent argued that, Execution No. 40/2020 does not concern the parties to the present application thus, they did not object the stay of execution No. 40/2020.

This court is alive of the fact that, the grant of an order staying execution is within the discretion of the court. However, the discretion which should be exercised judiciously has to be backed up by sufficient reasons. This court is also aware that the 1st respondent does not oppose the stay of Execution No. 40 of 2020 for reason that it does not concern the respondent in this application. There is no Execution No.40/2020 which was attached to this application. Admittedly, the requirement that a copy of the decree or order sought to be stayed should accompany an application for stay of execution is a mere practice of the Court and not a statutory requirement. However, in most cases the same is needed to assist the court to make analysis of the existence of the order which a party seeks the court to stay. In fact, this court cannot make analysis and arrive at a proper finding without being availed with proper documents concerning the execution or order sought to be stayed.

That being said I find that, the applicant has not cumulatively fulfilled the conditions set for the grant of an order of a stay of execution and I say this because of the following reasons, **first**, the applicant is moving this court to issue an order against the execution No. 40/2020 but the order to be executed has not been attached to the applicant's application and the application for Execution No. 80/2020 is what has been attached. The respondent's counsel pointed out in his


counter affidavit that, Execution No. 40/2020 does not exist either before the CMA or before this Court but still the applicant went on to submit and support the stay of the said Execution No. 40/2020. The applicant has not addressed anything regarding this inconsistency thus making this court not to be certain of the existence of the order sought to be stayed. Since the execution application sought to be stayed is not attached to the application, this court is of the view that the applicant was unable to satisfy the requirement under Order XXXIX Rule 5 (2) of the CPC by proving that there is execution in the process which this court is moved to stay.

Second, under paragraph 7 of the applicant's affidavit as well as the submission in support of the application, the applicant claimed to have filed application No. 07/2021 before the CMA aiming at challenging the award issued ex-parte by the CMA to which an order for execution is derived from. It is unfortunate that, the said application is not part of the application thus, making this court to conclude that there was no proof of the existence of sufficient cause for stay of execution. The applicant has not produced the copies for application before this court for the court to be sure that there is a pending application before the CMA. The execution cannot be stayed to infinite but pending determination of a suit/application. Failure of the applicant to prove the existence of a pending suit presupposes that the applicant has failed to establish sufficient cause for grant of an order for stay of execution. On top of that, the applicant has failed to establish the condition under the law by showing to this court that substantial loss may result to the applicant if an order is not granted. The applicant has not shown the

effort to give security for the due performance of such decree or order as may ultimately be binding upon him.

From the above reasons, the application before this court is baseless hence dismissed with costs.




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D.C. KAMUZORA

JUDGE

21/10/2021