

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(HIGH COURT LABOUR DIVISION)**

**MWANZA**

**MISC. LABOUR APPLICATION No. 25 OF 2022**

*(Originating from Labour Execution No. 30 of 2022)*

**SAYONA DRINKS LTD.....APPLICANT**

**VERSUS**

**ALBERT LUTH NORLINDILWA.....1<sup>st</sup> RESPONDENT**

**CLEOPHACE E. WAINDI T/A**

**ADDO THE GREAT GENERAL CO. LTD.....2<sup>nd</sup> RESPONDENT**

**RULING**

*Date of last Order: 29.09.2022*

*Date of Ruling: 07.10.2022*

**M. MNYUKWA, J.**

This application is brought under certificate of urgency and made under section 91(3) of the Employment and Labour Relations Act, Cap 366 R.E 2019 and Rule 24(1)(2) (a-f) 3(a-d) of the Labour Court Rules, 2007 (GN No. 106 of 2007) accompanied by an affidavit of PAUL MMASI, the Principal officer of the applicant. The applicant prayed for a stay of



execution of the labour Execution Award No. 30 of 2022 of the Commission for Mediation and Arbitration at Mwanza in Labour Dispute No. CMA/MZ/NYAM/198/2021/99/2021 which was issued on 15<sup>th</sup> August, 2022 pending hearing and determination of the Application for Revision of the Labour Revision No. 50 of 2022. The 1<sup>st</sup> respondent did not enter appearance and the matter proceeded ex-parte against him.

In his application, the applicant sought the following orders:

- 1. That this honourable court may be pleased to issue an order for stay of execution of the award of the CMA dated 21<sup>st</sup> January, 2022 pending the hearing and determination of the Application for Revision No. 50 of 2022 between the parties here in pending in this honourable court.*
- 2. Any other reliefs that this honourable court may deem fit and just to grant.*

In the affidavit filed in this court to support the application, the applicant deponed that; the 1<sup>st</sup> respondent was terminated from the employment contract on the ground of misconduct on 28<sup>th</sup> April 2021. Dissatisfied, the 1<sup>st</sup> respondent successfully lodged a referral to the Commission for Mediation and Arbitration (CMA) at Mwanza through a Labour Dispute No. CMA/MZ/NYAM/198/2021/99/2021, challenging the termination in which the decision was given in his favour. Dissatisfied with



the decision, the applicant filed Labour Revision No. 50 of 2022, in this court.

It was revealed from the applicant's affidavit that the 2<sup>nd</sup> respondent proceeded with the attachment of the applicant's motor vehicle and served him with a 14 days' notice to pay to the 1<sup>st</sup> respondent the amount awarded by the CMA or else the said motor vehicle is going to be sold to realise the CMA Award. The applicant further deponed that, he was not aware of the Execution proceedings despite the records showing that he was served the summons and averred that if the applicant's application for revision is granted while the 1<sup>st</sup> respondent has already executed the CMA Award, the applicant will suffer irreparable loss as the 1<sup>st</sup> respondent permanent address are unknown. He added that, the applicant is a company and it has invested in various movable and immovable property and hence they will be in a position to pay the 1<sup>st</sup> respondent if the application for revision will not succeed.

When the matter was called for hearing on 29<sup>th</sup> September 2022, Mr. Andrew Luhigo, learned counsel represented the applicant whereas Mr. Cleophas Waindi, appeared for the 2<sup>nd</sup> respondent.

The learned counsel for the applicant was the first to kick the ball rolling. He prayed to adopt his affidavit to form part of his submissions. He briefly narrated that; the applicant's affidavit has two legal issues



which is subject for determination in this court. The first issue is for the stay of execution to be granted and second issue is whether the respondent will be prejudiced if this application is granted.

In the first legal issue it is the applicant's counsel submission that, the applicant advanced sufficient cause for stay of execution under paragraph 11, 12 and 13 of the applicant's affidavit. He added that, the property that is attached is the business property in which for it being attached, the applicant incurred loss and, the said motor vehicle may be damaged if is not used. He went on that, the motor vehicle that was attached is of more value since it is almost double of the amount claimed by the 1<sup>st</sup> respondent in the CMA Award. He submitted that, this is contrary to Order XX1 Rule 15(4) of the Civil Procedure Code, Cap 33 R.E 2019, which reads together with Rule 48(3) of the Labour Court Rules, GN No. 106 of 2007.

On the second legal issue he submitted that, as they have deponed on paragraph 14 of the applicant's affidavit, the applicant is a big company and it has invested on movable and immovable properties and have reliable permanent address. He further stated that, if the outcome of the Revision application will be issued in favour of the 1<sup>st</sup> respondent, he will be in a position to execute the decision.



The applicant's counsel went on that, this court has power under Order XX1 Rule 24(1)(2)(3) of the Civil Procedure Code, Cap 33 R,E 2019 which reads together with Rule 48(3) of the Labour Court Rules, GN No. 106 of 2007 to order stay of execution, pending the determination of Revision application which is pending before this court and further order the 2<sup>nd</sup> respondent to release the applicant's motor vehicle , make Toyota Canter with Registration No. T. 256 DIX to the applicant, of which he attached for the purpose of satisfying the CMA Award which was further subject for Labour Execution No. 30 of 2022.

Responding, the 2<sup>nd</sup> respondent did not perse object the application for execution and since he is a court broker, his main concern was about the refund of the costs that has been used in attaching the motor vehicle in question and safe keeping it for the whole period when the said motor vehicle was attached and the security for the due performance of the decree.

He enlightens in his submission that, the court broker is regulated by the Court Broker and Process Server (Appointment, Remuneration and Disciplinary) (Amendment) Rule 2019. He refers to Rule 22 of the cited Rules and Order XXIV Rule 3 of the Civil Procedure Code, Cap 33 R.E 2019 that, before making an Order for stay of execution or for restitution of property or the discharge of the judgment debtor, the court may require



such security or impose such condition upon the judgment debtor as it think fit.

He therefore prayed for this court that, if it will grant an order for stay of execution, the costs that have been incurred by the 2<sup>nd</sup> respondent be considered.

Re-joining, the applicant submitted that if the court finds the validity of the 2<sup>nd</sup> respondent to be reimbursed for costs he had incurred for attachment and safe keeping of the applicant's motor vehicle, then the same should be borne by the 1<sup>st</sup> respondent for the reason stated in paragraph 11 and 12 of the applicant's affidavit as the applicant was not served with the summons for hearing of the execution proceedings.

After having heard the submissions from the parties to this application, and as I have earlier on noted, the submissions of the parties suggest that this application is not opposed save for costs that is prayed by the 2<sup>nd</sup> respondent to be reimbursed if the application is granted.

It is worthy to note here that, as it was stated in the case of **Unilever Tea Tanzania Limited v Mathias Mwandu**, Revision No. 9 of 2019, HCT Labour Division at Iringa as quoted in the case of **National Bank of Commerce Limited v Alfred Mwita**, Civil Application No. 172



of 2015 that, there is prerequisite before the application for stay of execution can be granted.

- i) Firstly, there must be an appeal or an application for revision or review pending in court.
- ii) Secondly, the application for stay of Execution should not be lodged after a prolong delay.
- iii) Thirdly, the applicant must demonstrate that substantial loss may result to the party applying for stay of execution unless the order is made.
- iv) Fourthly, the applicant must furnish security for the due performance of the decree or order sought to be stayed.

In our case at hand, it is undisputed that there is an application for Revision which is pending to this Court which is application No. 50 of 2022 challenging the Award of the CMA in labour Dispute No CMA/MZ/NYAM/198/2021/99/2021. It is also on record that, this application has been filed electronically on 24<sup>th</sup> August 2022 while the case for Execution was served to the applicant on 10<sup>th</sup> August 2022. This is a clear indication that the application for stay of execution has been lodged promptly.

Furthermore, in our case at hand the applicant demonstrated in his affidavit that the attached motor vehicle is used by the applicant in his



business transaction and the same may be damaged as for now is not in use. Since the application is not objected, I will not detain much to explain in this aspect. Considering the fact that, the applicant shows that he used the said motor vehicle in his business transactions and the same is not in use and there is a possibility of being damaged.

On the fourth criteria, on the issue of furnishing the security for the due performance of the decree, the applicant in his affidavit alleged that, he is a big company with movable and immovable properties and in case the Revision application will be decided in favour of the 1<sup>st</sup> respondent, he can realize the Award as the applicant permanent address is also well known. On his part the 2<sup>nd</sup> respondent refers to Order XXI Rule 24(1)(2) and (3) of the Civil Procedure Code, Cap 33 R.E 2019. I find it worth to quote Order XX1 Rule 24(3) which provides that;

*"Before making an order for stay of execution or for the restitution of the property or the discharge of the judgement debtor the court may require such security from or impose such conditions upon the judgement debtor as it thinks fit."*

It has to be noted that, though in order for the application to be stayed there should be a Revision application, but filing of a Revision itself is not a bar for execution unless the Execution proceeding is stayed. That's why in one of the conditions for granting an application for stay of



execution requires the application for stay of execution not to be lodged after the prolonged delay.

As it is seen from Order XXI Rule 24(3) of the Civil Procedure Code, Cap 33 R.E 2019 cited above, when an Order is made for the stay the court may impose such conditions as it thinks fit. Considering the fact that, the applicant did not deposit the security for the due performance of the decree, and since execution is all about the enforcement of the decree and its aim is to give the benefit to the decree holder in whose favour the Award has been made, it is for the interest of justice the security for the due performance of the decree to be deposited by the applicant for easy realization of the decretal sum if the Revision will be decided against his favour. In other words, a person against whom an order for stay is made, his interest should be protected.

In the case of **Geita Gold Mining Limited v Dominic Ishengoma**, Misc. Civil Application No. 32 of 2010 it was pointed out that:

*"Justice will even be balanced if execution is stayed on condition that the applicant deposits cash money of the decretal sum in the trial court pending the outcome of the Revision."*



Again, it is revealed from the submission of the parties that the 2<sup>nd</sup> respondent incurred the cost for attachment and safe keeping in this aspect, it is my considered view that, since the 2<sup>nd</sup> respondent incurred costs for attachment and safe keeping the motor vehicle which is prayed by the applicant to be released, it is upon the applicant who applies for stay of execution who is supposed to pay the costs for attachment and safe keeping because he is the one who is in need of that property and since the Revision was not determined, it is unjust for those costs to be borne by the 1<sup>st</sup> respondent as the same motor vehicle can still be kept until the finalization of the Revision Application.

All said and considered, the application for stay of execution is hereby granted. The execution of the CMA Award is hereby stayed on the following conditions;

1. The applicant should deposit in the Deposit Account of the Judiciary (to be furnished by the Court Administrator) the amount which is equal to the decretal sum awarded in the CMA Award.
2. The 2<sup>nd</sup> respondent should release the motor vehicle attached subject to the Applicant's payment of the costs for attachment and safe keeping incurred by the 2<sup>nd</sup> respondent after the costs have been taxed.



3. The order for stay shall exist and be valid pending the hearing and determination of the Labour Revision No. 50 of 2022.

Order accordingly.



  
**M. MNYUKWA**  
**JUDGE**  
**07/10/2022**

**Court:** Ruling delivered on 07<sup>th</sup> day of October, 2022 in the presence of the applicant's counsel and the 2<sup>nd</sup> respondent and in the absence of the 1<sup>st</sup> respondent.

  
**M. MNYUKWA**  
**JUDGE**  
**07/10/2022**