

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

MISC. LABOUR APPLICATION NO. 05 OF 2021

(Labour Application No. 02 of 2021)

KILIMANJARO PORTER'S ASSOCIATION (KPA).....APPLICANT

VERSUS

SAIMONI SOKA.....RESPONDENT

RULING

15/11/2021 & 18/03/2022

GWAE, J

This is an application by KILIMANJARO PORTER'S ASSOCIATION (KPA), ("the applicant") for stay of execution of a garnishee order granted in Labour Case No. 113 of 2019 delivered on 10/07/2019 pending hearing and determination of an application for extension of time which has been filed in this court through Misc. Labour Application No. 02 of 2021.

The following facts can be gathered from the affidavit of the applicant's National Chairman Executive Secretary; the parties were in a labour dispute at the Commission for Mediation and Arbitration (CMA) vide CM /KL/ ARS/ ARB/75/2011. On 28th November 2011 the Commission gave its award in

favour of the respondent. That, following the CMA award parties entered into a mutual agreement where the applicant agreed to reinstate the respondent holding the position of Executive Secretary from 18th July 2011 until 2018 when he lost during the election to be re-appointed as Executive Secretary. It was on December 2020 when the applicant became aware of the Labour Execution No. 113 of 2019 and an order of the Deputy Registrar of the Court issuing a garnishee order against the applicant's Bank account at NMB with the following account numbers 40310063914. It was further alleged by the applicant that she was not served with summons to object the application for execution and that she has also filed an application for extension of time to file application to set aside ex parte execution order.

On his part the respondent strongly opposed the application stating that there has never been any mutually agreement between the applicant and the respondent, he went further to state that, the applicant was well aware of the labour dispute at the CMA which resulted to the filing of the application for execution No. 123 of 2019, he added that the respondent had once filed an application for stay of execution but she subsequently abandoned it. In the last paragraph of his affidavit, the respondent also

faulted the applicant's application on reasons that for the application to be granted, there should be deposited amount as security.

At the hearing of the application the applicant was represented by the learned counsel **Ms. Mariam Saad** while the respondent was under the representation of **Mr. Ibrahim Omary** – Personal Representative.

Supporting the application Ms. Saad prayed for the adoption of the applicant's affidavit and added that, if the application is not granted the applicant is likely to suffer more irreparable loss. She thus urged this court to grant this application pending the hearing and determination of Misc. Application No. 02 of 2021.

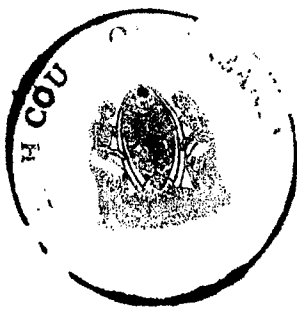
Mr. Omary, on the other hand, strongly prayed for the dismissal of the applicant's application on reasons that; **firstly**, that, there was no deed of settlement between the parties, **secondly**, that, an application for extension of time that is said to be before the Deputy Registrar is baseless and **thirdly**, that, the applicant's reasons are unfounded and above all the applicant be ordered to deposit security. He also added that if this application is granted the respondent will suffer more irreparable loss than the applicant.

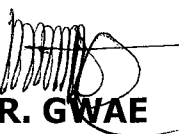
Having heard the parties' representatives, this court wish to state that in the determination of this matter, this court is obligated to ascertain as to whether the applicant has cumulatively satisfied the conditions for grant of an order for stay of execution. Order XX1 provides for conditions where a court can grant an order for stay of execution upon sufficient cause being shown. Under Rule 24 of the Order, it has been specifically provided that the before making an order for stay of execution, the court may require the imposition of the security from the judgment debtor. The respondent in his counter affidavit disputed the application by stating that the applicant herein has not deposited the security. In the case **of Mantrac Tanzania Ltd vs Raymond Costa**, Civil application No. 11 of 2010 (Unreported) the court gave the following guidance in pursuant to security;

"One other condition is that the applicant for a stay order must give security for the due performance of the decree against him. To meet this condition, the law does not strictly demand that, the said security must be given prior to the grant of the stay order. To us, a firm undertaking by the applicant to provide security might prove sufficient to move the court, all things being equal to grant a stay order, provided the court sets a reasonable time limit within which the applicant should give the same."

Guided by the above provision it is apparent that the applicant in this application has neither deposited security for the due performance nor given an undertaking to provide the same. Taking into account the nature of the dispute between the parties this court is of the view that an order as to deposit is an important and the same be made against the applicant. Nevertheless, this court has also considered the application and finds that sufficient cause has been demonstrated to grant the application to the extent of ordering stay of the intended execution pending the determination of the application for extension of time but subject to a deposit of Tshs. 5, 000, 000/= as security to the court's account. The ordered deposit must be done within **fourteen (14)** days from the date of this order otherwise the execution shall carry as previously ordered by the DR.

It is so ordered.




M. R. GWAE
JUDGE
18/03/2022