

**IN THE COURT OF APPEAL OF TANZANIA  
AT MWANZA**

**(CORAM: MZIRAY, J.A. MWAMBEGELE, J.A. And KWARIKO, J.A)**

**CIVIL REVISION NO. 1 of 2019**

**SERENITY ON THE LAKE LTD.....APPELLANT  
VERSUS**

**DORCUS MARTIN NYANDA..... RESPONDENT**

**(From stay of execution Order of the Deputy Registrar of the High Court of  
Tanzania (Labour Division) at Mwanza)**

**(Kingwele, DR.)**

**dated the 31<sup>st</sup> day of October, 2018**

**in**

**Miscellaneous Labour Application No. 18 of 2018**

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**RULING OF THE COURT**

9<sup>th</sup> & 12<sup>th</sup> April, 2019.

**MZIRAY, J.A.:**

By an Order of the Deputy Registrar (O. H. Kingwele) of the High Court of Tanzania (Labour Division) Mwanza Sub-Registry dated 31/10/2018, the applicant Serenity on the Lake Ltd. was compelled to deposit a sum of Tshs. 2,500,000/= to that court as security for the due performance of the decree in Revision No. 24 of 2017 delivered on 7/11/2017 in an application for stay of execution involving parties to this application. That order was made during the pendency of a Notice of Appeal to this Court.

On 11/12/2018 when Civil Application No. 559/08 of 2017 involving parties to this application was called on for hearing, this Court raised its concerns on the legality of the order for stay of execution issued by the Deputy Registrar of the High Court while there was a Notice of Appeal to this Court. It doubted the said Order. In exercise of its powers for revision in terms of section 4(3) of the Appellate Jurisdiction Act, Cap. 141 of the Laws, the Court ordered for a revision *suo motu* to be opened to look into the legality of the Order of the Deputy Registrar dated 31/10/2018 in Miscellaneous Labour Application No. 18 of 2018. This prompted the opening of this Revision *suo motu*.

When the application came before us for hearing on 9/4/2019, Mr. Bernard Mkungu, the Principal Officer of Serenity on the Lake Ltd., appeared for the applicant while the respondent, Ms. Dorcus Martin Nyanda, appeared in person. When invited to express his views on the order which prompted these proceedings, Mr. Mkungu was quick to comment that the order was unlawful on account of the fact that it was issued during the pendency of a Notice of Appeal to this Court. On the part of the respondent, being a layperson, had no comment to make. She left the matter for the Court to decide.

On our part, we think that two issues call for determination. One, whether the High Court was competent to issue an order of stay of execution while there was a Notice of Appeal pending in this Court. Two, whether the Deputy Registrar of the High Court (Labour Division) was seized with jurisdiction to hear and order for stay of execution of the decree in Revision No. 24 of 2017.

In answer to the first issue, we have no other good words to give than those stated by this Court in **Tanzania Electric Supply Company Limited vs. Dowans Holdings S. A. (Costa Rica) and Dowans Tanzania Limited (Tanzania)**, Civil Application No. 142 of 2012 (unreported) stating that:-

*"It is settled law in our jurisprudence, which is not disputed by counsel for the applicant, that the lodging of a notice of appeal in this Court against an appealable decree or order of the High Court, commences proceedings in the Court. We are equally convinced that **it has long been established law that once a notice of appeal has been duly lodged, the High Court ceases to have jurisdiction over the matter.**"*

[Emphasis ours].

Similar position was taken by this Court in **Awiniel Mtui and Three Others vs. Stanley Ephata Kimambo (Attorney for Ephata Mathayo Kimambo)**, Civil Application No. 19 of 2014 (unreported) in which the Court held that:-

*"...once a notice of appeal has been duly lodged, the High Court ceases to have jurisdiction over the matter."*

See also **Aero Helicopter (T) Ltd. vs. F. N. Jansen** [1990] T.L.R. 142.

On the strength of the above decisions, we are settled in our minds that the Deputy Registrar, of the High Court (Labour Division) did not have jurisdiction to hear and order stay of execution and at the same time order the applicant to deposit a sum of Tshs. 2,500,000/= to that court as security for the due performance of the decree in Revision No. 24 of 2017 while already there was a Notice of Appeal filed in this Court. That order had no backing of the law. What he was supposed to do after realizing that there was a pending appeal before this Court was to halt the proceedings and pave way for the appeal process to proceed. By entertaining the application for stay of execution while there was a pending notice of appeal

lodged in this Court, the Deputy Registrar slipped in an error for lack of jurisdiction. The order was therefore unlawful.

The other point which has disturbed our minds is whether the Deputy Registrar of the High Court (Labour Division) had powers to entertain an application for stay of execution emanating from revision proceedings of that court. Under section 91(3) of the Employment and Labour Relations Act No. 6 of 2004, the Labour Court has jurisdiction to stay the enforcement of the award of CMA pending its decision. Labour Court is defined under section 2 of the Labour Institutions Act No. 7 of 2004 to mean the Labour Division of the High Court established in accordance with the provisions of section 50 which states:-

*"50 – (1) There shall be established a Labour Division of the High Court.*

*(2) The Labour Division of the High Court shall consist of:*

*(a) such number of Judges as the Chief Justice may consider necessary;*

*(b) two panels of assessors appointed in terms of section 53.*

*(3) The Labour Division of the High Court shall be constituted by a Judge sitting with at least two assessors...*

*(4)N/A*

(5)N/A

(6)N/A”

The Registrar and Deputy Registrar of the Labour Court are covered under section 54 which states:-

*"There shall be a Registrar and Deputy Registrar of the Labour Division appointed in terms of the High Court Registries Rules, 1984."*

In all the provisions we have mentioned herein above and also the Labour Court Rules, they don't explain what are the powers of the Registrar of High Court Labour Division. Since such powers are specifically not provided, we seek guidance in Rules 55(1) of the Labour Court Rules, GN 106 of 2007 which provides:-

*"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."*

The above Rule gives us mandate to seek guidance in Order XLIII(1) (i) of the Civil Procedure Code (Cap. 33 R.E. 2002) which provides:-

*"1. Subject to any general or special direction of the Chief Justice, the following powers may be*

*exercised by the Registrar or any Deputy or District Registrar of the High Court in any proceeding before the High Court-*

*(a) – (h) not applicable*

*(i) **to stay execution**, restore property, discharge judgment debtors and require and take security under Order XXI, rule 24;*

*(j) – (l) not applicable”*

[Emphasis supplied].

It is possible that in entertaining Miscellaneous Labour Application No. 18 of 2018 for stay of execution, the Deputy Registrar acted on those powers stipulated under Order XLIII(i) of the Civil Procedure Code. However under section 91(3) of the Employment and Labour Relations Act, it is the court which is vested with the power and when we come to section 2 read together with section 50 of the Labour Institutions Act, earlier quoted, the Registrar does not feature anywhere in the composition of the Labour Court. We cannot go to the C.P.C. as per Regulation 55 (1) while there are specific provisions in the Labour Legislation which specifically states that stay of execution has to be done by the court. We are therefore convinced that the Deputy Registrar not forming part of the court had no jurisdiction to entertain and determine an application for stay of execution

of a decree originating from the High Court (Labour Division) in the exercise of its revision jurisdiction. He assumed jurisdiction which he did not possess.

For the above reasons, we are increasingly of the view that the Deputy Registrar had no jurisdiction to issue the stay order.

**DATED** at **MWANZA** this 11<sup>th</sup> day of April, 2019.


R. E. S MZIRAY  
**JUSTICE OF APPEAL**

J. C. M. MWAMBEGELE  
**JUSTICE OF APPEAL**

M. A. KWARIKO  
**JUSTICE OF APPEAL**



I certify that this is a true copy of the original.

  
B. A. MPEPO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**