

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MKUYE, J.A., LEVIRA, J.A., And MWAMPASHI, J.A.)

CIVIL APPLICATION NO. 81/17 OF 2020

STANBIC BANK (T) LTDAPPLICANT

VERSUS

SOPHIA MAJAMBARESPONDENT

(An Application for stay of execution of the judgment and Decree of the High Court of Tanzania (Land Division) at Dar es Salaam)

(Aboud, J.)

dated the 20th day of December, 2019

in

Revision No. 767 of 2018

.....

RULING OF THE COURT

13th & 28th June, 2022

MKUYE, J.A.:

The applicant, Stanbic Bank (t) Ltd, has filed this application seeking an order of this Court staying execution of the decree of the High Court of Tanzania (Labour Division) at Dar Es Salaam (Aboud, J) dated 20th December 2019 in respect of Labour Revision No. 767 of 2018. The application has been made by way of a notice of motion premised under Rule 11 (3), (4), (5) (a) and (b), (7) (a), (b), (c) and (d) and Rule 48 (1) of

the Tanzania Court of Appeal Rules 2009 (henceforth "the Rules"). The grounds for this application as shown in the notice of motion are that:

"1. The respondent intends to execute the Decree/Award against the applicant and has filed Execution proceedings before the High Court Labour Division at Dar Es Salaam and in the event the Decree/Award is executed, the applicant shall suffer substantial and irreparable loss that cannot be atoned by way of monetary compensation.

2. The application has been made without undue delay.

3. The applicant is willing to furnish necessary security for performance of the Decree/Award pending hearing of the intended appeal."

The notice of motion has been supported by an affidavit which was sworn by Eric Rwelamila, the Head of a Legal Unit in the applicant's company. On the other hand, the respondent did not file any affidavit in reply.

The facts leading to this application as can be gleaned from the affidavit in support of the application are that; sometimes in 1995 the applicant employed the respondent in the capacity of the bank teller and

was paid a monthly salary to the tune of Tshs. 22,000/=. Due to good performance in her work, the respondent rose to a managerial position whereby she then received a lucrative monthly salary of Tshs. 5,998,860/=. It would appear that sometimes in 2014, the respondent developed health problems which she believed to be associated with metaphysics. According to her, she shared her health problems she was facing with her superiors who in turn offered help much as they could.

However, on 15th May, 2015, the appellant terminated her employment on the ground of incapacity. Following her termination from employment, she was initially paid her dues amounting to Tshs 84,134,040/= and later, after she had complained, she was paid a further sum of Tshs. 71,986,320/= which made a total payment of Tshs. 155,000,000/=.

Since, the respondent was not satisfied with her termination, she referred the matter to the Commission for Mediation and Arbitration (the CMA) claiming that her termination from employment was unlawful. The CMA, upon hearing the parties, made a finding that the respondent's termination was substantially and procedurally fair. It further directed that the applicant should pay the respondent a portion of salary for 15 days

which remained unpaid at the tune of Tshs.3,46,880.80/= which was to be paid within fourteen days from the date of Award.

The respondent, having been dissatisfied by the decision of the CMA applied for revision in the High Court of Tanzania (Labour Division). The High Court after hearing both parties found that the respondent's termination from employment was both substantively and procedurally unfair. It awarded her a thirty months remuneration amounting to Tshs. 191,963,520/= and payment of two months remuneration amounting to Tshs. 11,997,720/=.

Aggrieved with the verdict of the High Court in revision, the applicant lodged a notice of appeal with the Court. However, on 11th March 2020 she was served with summons to appear in execution proceedings before the High Court, hence the present application to have the execution of the decree stayed.

When the application was called on for hearing, the applicant was represented by Mr. Shepo Magirari, learned advocate whereas the respondent had the services of Ms. Miriam Majamba, also learned advocate.

Onset, Ms Majamba conceded to the application for stay of execution since the applicant has complied with the requirements for the same to be granted. However, she implored the Court that the security should not be based on the guarantee of the judgment debtor (applicant) and that it should be from another bank.

On the rival side, Mr. Magirari welcomed the concession by the respondents' counsel and stressed that the application for stay of execution be granted. Nevertheless, he had no qualms if the security could be in a form of a guarantee from another bank.

The law governing stay of execution is Rule 11 of the Rules. In terms of Rule 11 (3) of the Rules, this Court has discretionary powers to grant stay of execution of the decree or order upon good cause shown by the applicant provided that the applicant has lodged a notice of appeal as per Rule 83 of the Rules. Further to that, the applicant is required to satisfy other conditions cumulatively as set out under sub rules (4), (5) and (7) of the Rules. The said provisions provide as follows:

"(4) An application for stay execution shall be made within fourteen

days of service of the notice of execution on the applicant by the executing officer or from the date he is otherwise made aware of the existence of an application for execution.

(5) No order for stay of execution shall be made under this rule unless the Court is satisfied that -

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

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

(6)N/A.....

(7) An application for stay of execution shall be accompanied by copies of the following -

(a) a notice of appeal;

(b) a decree or order appealed from;

(c) a judgment or ruling appealed from; and

(d) a notice of the intended execution."

Regarding the conditions precedent for the grant of the application for stay of execution, they were stated in the case of **B. R. Shindika t/a**

Stella Secondary School v. Kihonda Pitsa Makaroni Industries Ltd,

Civil Application No. 269 of 2015 (unreported), where the Court stated as follows:

"In all, it is undisputed that the applications for stay of execution are governed by Rule 11 (2) (c) (d) (i) (ii) and (iii) [Now 11 (3), (4) and 5 (a) and (b)] of the Court of Appeal Rules. The conditions precedent to the grant of an application for the stay of execution as spelt out in the above Rule can be summarized thus:

- 1. That the applicant must have filed a notice of appeal with this Court;*
- 2. The applicant must show good cause;*
- 3. That the applicant will suffer substantial loss if stay of execution is not granted;*
- 4. That the application for stay of execution has been made without unreasonable delay; and*
- 5. That security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him".*

At this juncture, we think, it is noteworthy to emphasize that, the above conditions must be cumulatively satisfied. This stance was taken in

the case of **Mohamed Enterprises (T) Ltd v. Mussa Sheban Chekechea**, Civil Application No. 394/11/2018 (unreported) in which the Court adopted the case of **Britam Insurance (T) Limited v. Oceanic Bay Hotel Limited**, Civil Application No. 116/01 of 2018 (unreported) in which it was stated as follows:

"We wish to begin by expressing the obvious that according to Rule 11 (5) (c) (b) and (c) of the Rules, an order for stay of execution will not be granted unless cumulative conditions enumerated thereunder exist".

We have examined the application in the light of the requirements stated earlier on. We note that with regard to the time within which the application has to be made, it is clearly stated in Rule 11 (4) of the Rules that it has to be made within fourteen days of service of the notice of the execution or from the date when the applicant became aware of the existence of the application for execution.

In this application, we have observed that the applicant did not state in the affidavit in support of the notice of motion as to when she was served with a notice of execution or when the existence of the application for execution came to her knowledge. However, having looked at

Annexure 4 to the affidavit in support of the application, which is the application for execution of the decree, it has been revealed that the applicant received summons to appear in the execution proceedings scheduled on 18th March 2020 on 11th March 2020. This application was lodged in this Court on 19th March 2002. Now, counting from 11th March 2020 when the applicant became aware of the execution proceedings to 19th March 2020 when she lodged the application at hand, only eight days had lapsed. Thus, it is clear that the application was filed within time as it was lodged within the period of fourteen days from the date she was made aware of the existence of the application for execution as required by law.

With regard to the requirement for the applicant to show whether or otherwise she would suffer irreparable loss if the application is not granted, the applicant has stated in paragraphs 11 and 12 of the affidavit in support of the notice of motion as hereunder:

"11, That if the stay is not granted the Applicant wiii suffer irreparable loss that cannot be atoned by way of monetary compensation as the Respondent has no known fixed immovable asset. Should the intended appeal succeed, the applicant is not

going to recover the money that would be taken through execution”.

12. That the applicant is a reputable company able to satisfy the judgment at any time should the preferred appeal fail. To the contrary, the respondent has no any known permanent place of abode with no record of fixed/immovable asset, and should the appeal succeed, the applicant will not recover the money that would be taken, in the event of the decree is not stayed.” [Emphasis added].

A part from the applicants’ averment in the above paragraphs, she has stated the same in the first ground of the Notice of motion. Indeed, this can be translated to mean that should the appeal succeed, the respondent may not be able to refund the sums paid out to her since her sources of income are not known. Considering that the amount involved is colossal, if it is paid out to the respondent and the appeal succeeds and the respondent fails to refund it to applicant, then the likelihood of substantial loss cannot be under-estimated.

As regards the requirement to furnish security for the due performance of the decree, the applicant has clearly stated in paragraph 15

of the supporting affidavit her willingness to furnish it. For easy of reference, we reproduce the said paragraph hereunder:

"15. That should this Court find it appropriate the applicant is ready to furnish necessary security for the performance of the Decree."

From the above averment, therefore, we are satisfied that the applicant has made an undertaking towards the furnishing of security which is an essential requirement for an order for stay of execution to be granted.

In addition, the applicant has complied with the requirement provided under sub-rule (7) of Rule 11 as she has attached all the required documents which are the copies of the notice of appeal, the decree and the judgment appealed from together with the notice of the intended execution.

Ultimately, with the foregoing, we are satisfied that the applicant has shown good cause and has satisfied cumulatively the conditions warranting the grant of the application for execution. We, thus, grant the application and stay the execution of the decree of the High Court of Tanzania (Labour Division) (Aboud, J.) in Labour Revision No. 767 of 2018 dated 20th

December, 2019 pending the hearing and final determination of the intended appeal. We further order that the applicant should deposit in Court within thirty days from the delivery of this Ruling, a security in the form of a bank guarantee from CRDB Bank for the decreed sum to the tune of Tshs. 191,963,520/= . Costs of the application shall abide the outcome of the intended appeal.

It is so ordered.

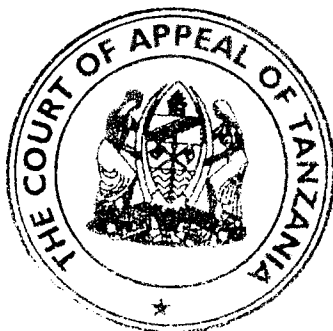
DATED at DAR ES SALAAM this 24th day of June, 2022.


R. K. MKUYE
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Ruling delivered this 28th day of June, 2022 in absence of the applicant and Ms. Miriam Majamba, learned counsel for the respondent, is hereby certified as true copy of the original.




R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL