

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 398/18 OF 2022

BHARYA ENGINEERING AND CONTRACTING CO. LTD.....APPLICANT

VERUS

LABOUR COMMISSIONER.....1st RESPONDENT

LEGIT AUCTION MART.....2nd RESPONDENT

**(Application for Stay of Execution arising from the Judgment and Decree of
the High Court of Tanzania (Labour Division) at Dar es Salaam)**

(Maghimbi, J.)

dated the 27th day of May, 2022

in

Labour Appeal No. 1 of 2022

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RULING

11th & 14th July, 2022

FIKIRINI, J.A.:

By notice of motion under Rule 11 (3), 11 (4), (4) (A), 11 (5) (a) and (b), 11 (6), 11 (7) (a), (b), (c), and (d) and Rule 48 (1) of the Tanzania Court of Appeal, Rules 2009 (the Rules), the applicant, Bharya Engineering and Contracting Co. Ltd, is seeking for stay of execution *ex parte* pending hearing inter parties. The application is supported by an affidavit sworn by Sarbjit Singh Bharya dated 30th June, 2022.

Brief background culminating in the present application is that the applicant objected to the Labour Officer's Compliance Order with reference number DAR/U.10/4/2021/01, commonly known as application for condonation, dated 16th February, 2022. The application was declined, which compelled the Labour Commissioner to enforce the order by instituting Labour Execution No. 224 of 2021 vide a decision through a letter with reference number BC.101/210/01/104 dated 4th March, 2022. The applicant then lodged an appeal before the High Court (Labour Division) registered as Labour Appeal No. 1 of 2022, to prevent the execution from proceeding. On 27th May, 2022, the High Court dismissed the appeal. The execution proceedings, which were halted to pave way for the determination of the Labour Appeal No. 1 of 2022, was thus revived hence the present application.

In both the notice of motion and affidavit in support of the application the deponent averred that the notice of appeal has already been lodged, but not the appeal, as the applicant was still waiting to be furnished with a copy of proceedings to allow lodgment of the appeal. The challenge which the applicant is faced is that, after pronouncing its judgment on the 27th

June, 2022, the High Court ordered execution proceedings, which were halted to pave way for the hearing of the Labour Appeal No. 1 of 2022, to proceed, therefore the applicant's motor vehicle with registration number T. 222 DHL, make Volkswagen, Amarok Pickup, which by then was already attached in execution of the compliance order, stands to be sold in an auction on 21st July, 2022, while the applicant is still waiting to be furnished with a copy of proceedings to allow lodgment of the appeal. Copies of the judgment, decree, and proclamation of sale were annexed to the affidavit marked as annexures S-3, S-4, and S-5.

On 11th July, 2022 when the application came on for hearing, Mr. Michael Mwambeta learned advocate entered appearance on behalf of the applicant. In addressing the Court, he preceded his oral submission by adopting the affidavit deposed by Sarbjit Singh Bharya. He further contended that the applicant's motor vehicle attached and about to be sold was used by the applicant in carrying out her job, therefore unless this application is granted the applicant will suffer irreparable loss and the intended appeal will be nugatory, as amplified in paragraph 7 of the

affidavit. He also stated that the applicant has committed itself as indicated in paragraph 8 of the affidavit.

Mr. Mwambeta also stressed that the present application was promptly filed. Right after the judgment and order that execution should proceed was made on 27th June, 2022, this application was filed on 4th July, 2022. On the above premises he urged me to grant the application and stay the execution pending determination of the application inter parties.

I have examined the notice of motion, affidavit in support of the application filed and the oral submission by Mr. Mwambeta learned advocate, and I am persuaded that the applicant has complied with the requirements of Rules 11 (3), (4), (4) (A) and (7) (a), (b), (c), (d) of the Rules. There is on record a notice of appeal lodged on 27th May, 2022, the present application was lodged on 4th July, 2022, right after the order that execution should proceed, in compliance with Rule 11 (4), which requires such application to be filed within 14 days prescribed. Also, there are copies of the impugned judgment and decree, and a copy of the letter addressed to the Deputy Registrar of the High Court (Labour Division) requesting to be supplied with the certified copies of the judgment, decree, and proceedings.

The applicant has also, in paragraphs 7 and 8, of the affidavit in support of the application, expounded on irreparable loss to be experienced if this application is declined. The applicant has as well shown willingness to furnish security for the due performance of the decree sought to be stayed, all of which I have constructively considered.

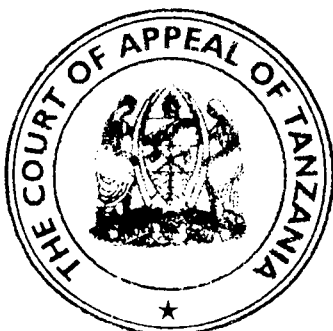
Satisfied that the applicant has made out its case, I, thus under Rule 11 (6) of the Rules, proceed to grant the application and order an *ex parte* stay of execution in Labour Execution No. 224 of 2021, arising from Labour Appeal No. 1 of 2022, High Court (Labour Division) dated 27th May, 2022 pending the hearing and determination of the application inter parties.


It is so ordered.

DATED at DAR ES SALAAM this 14th day of July, 2022.

P. S. FIKIRINI
JUSTICE OF APPEAL

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




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL