

IN THE COURT OF APPEAL OF TANZANIA

AT MUSOMA

CIVIL APPLICATION NO. 111/08 OF 2020

GRUMENT RESERVES LTD APPLICANT

VERSUS

ELIAS SOMBA MISARERA RESPONDENT

(Application for Stay of Execution of the Decision and Decree of the High Court of Tanzania at Musoma)

(Galeba, J.)

dated the 6th day of December, 2019

in

Labour Revision No. 27 of 2017

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RULING

29th April & 7th May, 2024.

FIKIRINI, J.A.:

This is an application for stay of execution made under Rule 11 (3), (4), (5) (a) and (b), (6) and (7) (a) – (d) of the Tanzania Court of Appeal Rules, 2009 (the Rules) in which the applicant seeks to have the judgment and decree of the High Court (Labour Division) in Labour Revision No. 27 of 2017, stayed pending the determination of an intended appeal. The application is supported by the affidavit deposed by Mr. Innocent Felix Mushi, learned advocate duly authorized. The

respondent, Elias Somba Misarera, did not file an affidavit in reply, he was however, present at the hearing fending for himself.

Brief background leading to the present application can be summarized as follows: the respondent was employed as a Game Scout attached to the Security department on 7th March, 2003 as exhibited by exhibit D5. All was well until on 16th February, 2016, when he was suspended by Grumet Fund Tanzania as per exhibit D1. While at home from suspension on 3rd March, 2016 he was served with a letter – exhibit D3, from the applicant, Grument Reserves Ltd, explaining the charges he was facing and disciplinary hearing date scheduled.

The hearing in the form of questionnaire took place on 17th March, 2016 as per exhibit D4. The respondent was found responsible with the charges levelled against him. He was subsequently terminated by the Grumet Fund Tanzania on 1st April, 2016. Aggrieved by the termination, he approached the Commission for Mediation and Arbitration (CMA) and lodged his complaint. The CMA decided in favour of the respondent.

Dissatisfied the applicant filed Revision No. 27 of 2017, where she again lost after the High Court ordered reinstatement as there was no evidence that the applicant has ever terminated the respondent from

employment. From the decision the applicant preferred an appeal to this Court.

By way of a notice of appeal lodged on 16th December, 2016 and a letter dated 4th February, 2020 requested to be supplied with the copy of proceedings, judgment, decree and exhibits. Meanwhile, the respondent lodged Execution Application No. 35 of 2019 to enforce the decree in Revision No. 27 of 2017, a copy of the execution form has been attached to the affidavit in support marked as GRL3.

The application was heard on 3rd May, 2024. Mr. Mushi learned advocate appeared for the applicant whereas the respondent appeared unrepresented. The learned advocate prayed to adopt the notice of motion and affidavit filed on 26th February, 2020 and made part of his submission in support of the application. Otherwise, he urged the grant of the application considering all the requirements were fulfilled.

On his part the respondent, even though he did not file any affidavit in reply, he nonetheless, opposed the application on the ground that it is almost four years since the notice of appeal was lodged and eight years since he found himself in the predicament of loosing his employment.

In a brief rejoinder, the learned advocate, asserted that the delay in obtaining the requested documents was out of the applicant's control, but the applicant has been pressing. Currently the applicant was waiting for the exhibits and a certificate of delay and from there the intended appeal should be lodged.

This application, I am invited to determine whether it is meritorious or not, should not detain me long. To start with, I wish to recap the position of the law regarding granting an application for stay of execution.

It is trite law that, in order for the Court to grant the application for stay of execution all the conditions stipulated under rules 11 (3), 11 (4) (4A), 11 (5) (a) & (b) and 11 (7) (a), (b), (c) & (d) must be cumulatively fulfilled. See: **Joseph Soares @ Goha v. Hussein Omary**, (Civil Application No. 12 of 2012) [2013] TZCA 328 (8th May, 2013; TANZLII), and **Gilbert Zebedayo Mrema v. Mohamed Issa Makongoro**, (Civil Application No. 369/17 of 2019) [2020] TZCA 48 (16th March, 2020; TANZLII).

After perusing through the applicant's affidavit, I without a doubt find that all the requirements were fulfilled to warrant the grant of the application for stay of execution. This application was filed after the

applicant has been made aware of execution proceedings which had been lodged at the Labour Court Division of the High Court, vide service effected and received on 19th February, 2020. The present application was filed on 2nd March, 2020 which is within fourteen days as prescribed under rule 11 (4) of the Rules. Accompanying the application was a copy of the notice of appeal, judgment, decree in Labour Revision No. 27 of 2017, and notice of execution as required under rule 11 (7) (a), (b), (c) and (d). Besides, the applicant has also in paragraph 9 of the affidavit has expressed the irreparable loss to be suffered in case the application is declined. This includes the averment that it will be difficult for the applicant to recoup its money back from the respondent in the event the applicant wins the intended appeal. The winning will in essence be nugatory.

Similarly, the applicant in paragraph 6 of the affidavit has shown readiness to provide security equal to Bank Guarantee for the satisfaction of the decree within time and on conditions which will be given by the Court.

Satisfied that the applicant has fulfilled all the requirements, I proceed to grant the application and order that the execution of the judgment and decree of the High Court (Labour Division) in Labour

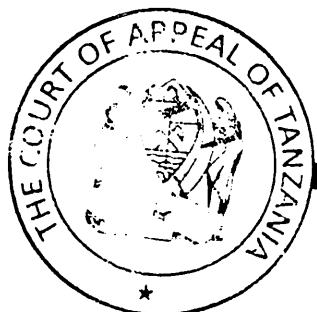
Revision No. 27 of 2017, be stayed pending the hearing and determination of the intended appeal to this Court. In terms of Rule 11 (5) (b) of the Rules, I, order the applicant to deposit with the Registrar of the Court an irrevocable bank guarantee in the sum of Tzs. 50,000,000/=. The intended bank guarantee should be amenable to renewal to cover the whole period until the pending appeal is determined and it should be deposited within sixty days from the date of this order. Costs to follows events.

It is so ordered.

DATED at MUSOMA this 6th day of May, 2024.

P. S. FIKIRINI
JUSTICE OF APPEAL

The Ruling delivered this 7th day of May, 2024 in the presence of the Respondent in person, unrepresented and Mr. Evance Njau holding brief for Mr. Innocent Moshi, learned counsel for the Applicant, is hereby certified as a true copy of the original.

The seal of the Court of Appeal of Tanzania is circular. It features the national coat of arms of Tanzania in the center, which includes a lion and a zebra. The words "THE COURT OF APPEAL OF TANZANIA" are written around the perimeter of the seal, and a small star is at the bottom.
C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL