

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

CIVIL APPLICATION NO. 966/08 OF 2023

AMANI GIRLS HOME APPLICANT

VERSUS

ISACK CHARLES KANELA RESPONDENT

**(Application for extension of time to file an Application for Stay of Execution
of Decree of the High Court of Tanzania at Mwanza)**

(Wambura, J)

dated the 26th day of February, 2014

in

Labour Revision No. 24 of 2012

.....

RULING

16th & 23rd February 2024

MLACHA, J.A.:

By way of a notice of motion made under rule 10 of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules), which is supported by the affidavit of Agripina John, the manager of the applicant, the Court is asked to make orders extending the time for filling an application for stay of execution of the decision of the High Court made in Labour Revision No. 24 of 2012 at the High Court of Tanzania at Mwanza (Wambura J., retired). Notice of the application for execution was served to the applicant on 17th July 2023 while the present application was lodged on 1st December, 2023. The respondent is resisting the application and has filed an affidavit in reply.

The factual background can be produced briefly as follows: The respondent was employed by the applicant, a non - governmental organization taking care of vulnerable young children and adults. He was employed by one Kate Mallanhan (a foreign national) who has since left the country. A misunderstanding erupted later leading to termination. It was alleged that those who took over leadership did not like his services. The respondent felt aggrieved and sent the applicant to the Commission for Mediation and Arbitration (CMA) claiming payment of terminal benefits and unpaid salaries. The claims were found to be baseless and dismissed. He appealed to the High Court, Labour Division at Mwanza. In its decision made on 26th February, 2014, the High Court vacated the decision of the CMA and awarded: 1 month's salary in lieu of notice, 12 months' salary as compensation as per section 40 (1) (c) of the Employment and Labour Relations Act, No. 6 of 2004, un paid salaries, leave allowance and severance allowance. The judgment did not quantify the figures but the application for executing filed in the High Court has a decretal sum was TZS. 10,250,000.00 and statutory interest of TZS. 6,696,667.00 making a total of TZS. 16,946,667.00.

The applicant was aggrieved by the decision of the High and made a move to come to this Court. The road to this Court has not been easy; there were several litigations before the High Court and this Court. Finally an

appeal was lodged before the Court. Execution proceedings were also filed before the High Court notice of which was served to the applicant as alluded to above.

The notice of motion lodged before the Court has one ground, namely:

- 1. That, the prescribed time to file the application for stay of execution lapsed while the applicant was engaged in an application for leave to lodge a notice of appeal.*

Mr. innocent Michael appeared for the applicant while the respondent appeared in person. The applicant filed a written submission in terms of rule 106 (1) of the Rules which was adopted as part of her oral submissions. The respondent did not file written submissions but was given opportunity to address the Court.

The oral submissions were brief. Mr. Michael amplified that the 14 days period within which to lodge an application for stay of execution expired at the moment when the applicant was pursuing his application for leave to lodge a notice of appeal out of time. Earlier, counsel submitted, the Court struck out Civil Appeal No. 50 of 2020 something which prompted the applicant to file an application for leave to file a notice of appeal out of time. The applicant also filed an application for stay of execution at the High Court. Her application for extension of time to file a notice of appeal was allowed. She filed a notice of appeal. Later she withdrew her application for stay of

execution and proceeded to file the present application which was lodged on 1st December, 2023.

It was further submitted by Mr. Michael that, the applicant received the notice of execution on 17th July, 2023, meaning that the application for stay of execution was supposed to be filed by 30th July, 2023 in terms of rule 11(4) of the Rules. It was not filed until 1st December, 2023 because of existence of the two applications; the application for extension of time to lodge a notice of appeal and the application for stay of execution. Making reference to **Fortunatus Masha v. William Shija and Another** [1997] TLR 154 and **Amani Girls Home v. Isack Charles Kanela**, Civil Application No. 325/8 of 2019 counsel intimated that the applicant was delayed by litigation in between, hence technical delay, which is excusable under the law. He urged the Court to grant the application.

Like the applicant, the respondent prayed to adopt the contents of his affidavit in reply as part of his oral submissions. He admitted the existence of the two applications but he contended that there was no account for the period between 1st November, 2023 and 1st December, 2023 when the present application was lodged; a delay of 30 days. Based on this understanding of facts, he urged the Court to dismiss the application.

In rejoinder, counsel for the applicant submitted that, no action was taken in between 1st November, 2023 and 1st December, 2023 because of

the existence of the application for execution at the High Court. It took time to get the withdrawal order. He reiterated his earlier position and urged the Court to grant the application.

Having examined the supporting affidavits and considered the submissions made before me, as it is usually the case in applications of this nature, the issue is whether the applicant has managed to establish good cause, to allow the Court to exercise its discretion under rule 10, to extend the time for filing the application for execution. The record shows that the application for execution was lodged on 26th June, 2023 and served to the applicant on 17th July, 2023 as hinted above. The applicant was supposed to lodge his application within 14 days as provided under rule 11(4) of the Rules, that is on or before 30th July, 2023. The present application was lodged on 1st December, 2023 meaning that, the applicant has to account for delay of the period between 30th July, 2023 and 1st December, 2023, a total of 123 days. The applicant says that she was held up in the court corridors of the High Court in the two applications.

Both parties agree that they were in the High Court in Miscellaneous Labour Application No.10 of 2023; the application for extension of time to file a notice of appeal to this Court. The ruling of this application was delivered on 31st October, 2023. The respondent has no query on the period from 30th July, 2023 when time started to run against the applicant up to

30th October, 2023 when the ruling in the application was made. Her problem lies in the period which followed, that is from 1st November, 2023 up to 1st December, 2023. He has the view that there was no account made for this period which stretch for 30 days. The applicant has accounted for this period saying that she had to seek the indulgence of the High Court to withdraw the application for execution, prepare and file the current application. She added that she filed the current application immediately after getting the withdrawal order.

The record shows that he respondent admits that there was an application for stay of execution filed in the High Court. This is reflected in paragraph 9 of his affidavit which reads as under:

*"That, after the fore going appeal was struck out by this Court, I revived my application for execution No. 08 of 2014 in the High Court. On 27/07/2016, **the Applicant filed Misc. Application No. 21 of 2016 in the High Court. That was an Application for stay of execution of the judgment and decree of the High Court Labour Division (Wambura, J.) dated 26/02/2014 in Revision No. 24 of 2012...**"(Emphasis added)*

If there was such an application in the High Court, whose existence is admitted by the respondent, then the applicant could not file the present application without first obtaining leave of the High Court to withdraw it. Definitely, some days must have been used to get the withdrawal order and

engage a counsel to draw and file the present application. The applicant says she used this period to do those things and I agree with her. There was therefore, a good account for the entire period, including the period from 1st November, 2023, up to 1st December, 2023 which is complained of by the respondent.

That said, the application is granted. The applicant is given 14 days within which to lodge her application for stay of execution of the decision of the High Court made in Labour Revision No. 24 of 2012.

Order accordingly.

DATED at **MWANZA** this 23rd day of February, 2024.

L. M. MLACHA
JUSTICE OF APPEAL

The Ruling delivered this 23rd day of February, 2024 in the presence of Mr. Maenda chacha holding brief for Mr. Innocent Michael Ndanga, learned counsel for the applicant and the respondent appeared in person, is hereby certified as a true copy of the original.



G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL