

TANZANIA / JUDGMENT

Cable Television Network CTV Limited

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AT PAR ES SALAAM CIVIL APPLICATION NO. 17/18 OF 2024 CABLE TELEVISION NETWORK (CTV) LIM ITED..... APPLICANT VERSUS POTENTINE PROTAS BYARUGABA..... RESPONDENT (Application for stay of execution of a decree of the High Court of Tanzania, Labour Division at Dar es Salaam) fMlvambina, J.^ dated the 21st day of Juiy, 2023 in Revision No. 89 of 2023

RULING

12th September, & 19th November, 2024 MASH AKA. J.A.: This application is for stay of execution of a decree of the High Court of Tanzania, Labour Division in Revision No. 89 of 2023 dated 21st July 2023. It is brought by notice of motion under rules 11(3), (4), (4A),

- (5) (a) and (b), (6), (7) (a), (b), (c), (d) and 48(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The notice of motion is supported by affidavit affirmed by Paresh Dinesh Nagar, the General Manager of the applicant. The judgment and the decree were entered in favour of the respondent and the applicant was ordered to pay him 20 months compensation basing on his monthly salary of TZS. 639,000/=. Consequently, the respondent set in motion execution proceedings in order to realise the above decree. Contemplating the submissions by Mr. Hassan Mwemba and Ms. Stella Rweikiza representing the applicant and the respondent respectively, I am guided by the notice of motion referred above, to stay execution of the decree in Revision No. 89 of 2023 pending determination of the intended appeal between the parties. The application is accompanied by among others, a copy of the notice of appeal dated 09/08/2023, the judgment and decree dated 21/07/2023, and the Deputy Registrar's notice to show cause why execution should not proceed, which was served to the applicant on 05/01/2024. Ms. Rweikiza raised a point of objection that the applicant failed to verify paragraphs 9, 12, 13, 14, 15, 16, 17 and 18 of the supporting affidavit in the verification clause and prayed to have them disregarded. She prayed that the supporting affidavit be struck out along with the notice of motion whose legal existence is anchored on an unblemished affidavit. Rejoining, Mr. Mwemba implored me to consider the contents of paragraph 9 and determine the application though he conceded to the deponent's failure to verify paragraphs 9, 12, 13, 14, 15, 16, 17 and 18 of the supporting affidavit which averred on the accompanying copies of judgment and decree, the substantial loss to be incurred by the applicant and the willingness to furnish security for the

performance of the decree. As a matter of law, an application of this nature requires the applicant to cumulatively comply with rule 11 (4), (5) (a) and (b), and

- (7) (a), (b), (c), and (d) of the Rules. Rule 11 (4) of the Rules, requires the application to be filed within fourteen days upon the applicant being served with the notice of the intended execution or became aware of the execution process. Paragraph 11 of the supporting affidavit, shows that the applicant was served with the notice of execution on 5th January, 2024 and the application at hand was lodged on 16th January, 2024 well within the prescribed time. Furthermore, the applicant is obliged to show the substantial loss which may result if stay of execution will not be granted, and the fact that she is ready to furnish security for the due performance of the decree as it may ultimate be binding upon her in terms of rule 11 (5) (a) and (b) of the Rules. In the instant application, at paragraphs 12, 13 3 and 14 of supporting affidavit the applicant has demonstrated how she will suffer substantial loss in case this application is not granted, however these paragraphs were not verified by the deponent in the verification clause. Additionally, paragraph 9 of the supporting affidavit which avers on the accompanying judgment and decree in compliance to rule 11 (7) (b) and (c) of the Rules has not been verified. The issue for consideration in this application is the validity of the affidavit deponed by the deponent as General Manager of the applicant. From the record as well as the submissions of both learned counsel, it is undisputed that the applicant's affidavit which is an essential part of this application did not specifically authenticate all the 18 paragraphs including deposed facts at paragraphs 9, 12, 13, 14, 15, 16, 17 and 18. The verification clause in the affidavit shows the facts the deponent asserts to be true of his own knowledge and/or those based on information or beliefs. The importance of a verification clause was explained in an Indian case of *A.K.K. Nambiar v. Union of India* (1970) 35 CR.121 where it was stated: 'The im portance o f verification is to test the genuineness and authenticity o f allegation and also to make the deponent responsible fo r allegations. In essence verification is required to enable the court to find out as to whether it w ill be safe to act on such affidavit evidence...." According to the excerpt, I find that what is provided in the impugned affidavit as a "Verification clause"and signed by the deponent for the applicant is materially defective. That is so because it does not specifically authenticate the facts deposed in the said paragraphs as to whether they were true of the deponent's own knowledge and or whether they were based on information received and believed to be true. At this point, I recall that the learned counsel for the applicant prayed for my indulgence to consider the defects in the affidavit as the paragraphs are binding on the applicant. The Court observed in *Phantom Modern Transport (1985) Limited v. D.T. Dobie (Tanzania) Limited*, Civil Reference No. 15 of 2002 that: - "It seem s to us that where defect in an affidavit is inconsequential, those offensive paragraphs can be expunged or overlooked, leaving the substantive parts o f it intact so that the court can proceed to act on it. If, however, substantive parts or an affidavit are defective, it cannot be am ended in the sense o f striking o ff the offensive parts and substituting thereof correct averm ents in the sam e affidavit." From the excerpt, a court can expunge unverified paragraphs. I accede to this correct position of the law, and accordingly expunge paragraphs 9, 12, 13, 14, 15, 16,

17 and 18 from the affidavit supporting the notice of motion. Having done so, I conclude with certainty that expunged paragraphs 9, 12, 13, 14, 15, 16, 17 and 18 affect the substantive part of the affidavit. Thus, the application has failed to comply cumulatively with rule 11 (5) (a) and (b) and (7) (b) and (c) of the Rules. In the foregoing, I find the application is incompetent. Consequently, the same is hereby struck out. Since the matter originates from a labour dispute; I make no order as to costs. DATED at DAR ES SALAAM this 19th day of November, 2024. L. L. MASHAKA JUSTICE OF APPEAL Ruling delivered this 19th day of November, 2024 in the presence of Mr. Shepo Magirari, learned counsel for the Applicant and in the absence of the Respondent, is hereby certified as a true copy of the

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/cable-television-network-ctv-limited-v-potentine-protas-byarugaba-stayofexecution-tanzlii-2024

Prepared on 14 October 2026 · Esheria