

TANZANIA / JUDGMENT

ROYAL TRINITY

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18 November 2024

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IN THE HIGH COURT OF TANZANIA DODOMA SUB - REGISTRY AT DODOMA MISC. LABOUR APPLICATION NO. 24036 OF 2024 (Arising from the decision of the CMA in Labour Dispute No. CMA/DOM/DOM/34/2024/10/2024; and Labour Revision No. 23921 of 2024 pending before the High Court of Tanzania, Dodoma Sub-Registry) ROYAL TRINITY LIMITED..... APPLICANT VERSUS NURAH AMANI.....RESPONDENT

RULING

November & 15th November, 2024 MUSOKWA, J. The applicant herein is seeking for orders to stay the execution of an Award issued by the Commission for Mediation and Arbitration (CMA) at Dodoma. The aforementioned award relates to Labour Dispute No. CMA/DOM/DOM/34/2024/10/2024 dated 13th September, 2024. The application for stay of execution is made under sections 91(3), 94 (1) (f) of the Employment and Labour Relations Act, Cap. 366, R.E. 2019 (ELRA); Rule 24(1), (2)(a) (b) (c) (d) (e) (f); Rule 24 (3) (a) (b) (c) (d); and Rule 28 (1)

- (a) (b) (c) (d) and (e) of the Labour Court Rules, G.N. No. 106 of 2007 (the Rules). i Before the CMA, the respondent herein successfully instituted and prosecuted the aforementioned labour dispute against the applicant herein for constructive termination of employment. The orders in the Award were to the effect that the applicant should compensate the respondent TZS 72,369,230.05 being terminal benefits. Aggrieved by the CMA Award, the applicant filed Labour Revision No. 23921 of 2024 which is pending before this court. Notably, the respondent has not yet filed an application for execution of the said Award. On the date scheduled for hearing, the applicant was represented by Mr. Mahmoud Mwangia, learned advocate. The respondent enjoyed the services of Ms. Aisha Kijuu, learned counsel. Briefly submitting in support of the application, Mr. Mwangia first prayed to adopt the affidavit in support of the application which was deposed by one Rogers Sollo; the applicant's Finance and Operations Manager, to form part of the submissions. Upon the prayer being granted, the applicant's counsel proceeded to state that the amount in the award is huge. Thus, in the event the said Award is executed, the applicant's business will suffer great loss. The applicant further averred that any conditions that may be ordered by this court in relation to the prayers for grant of stay of execution of the 2 award, pending the hearing and determination of the revision between the parties, will be duly complied with.

In reply thereto, Ms. Aisha Kijuu, counsel for the respondent had no objection to the prayers sought by the applicant. In rejoining, Mr. Mwangia reiterated the prayers in his submission in chief, further pointing out that the prayers were uncontested. In this regard, there is sufficient ground for the prayers sought to be granted by this court. Having gone through the applicant's affidavit and submissions, the main issue for determination is whether or not the application has merit. According to facts deposed in the affidavit in support of this application, the applicant alleges that she is capable to pay the amount awarded by the CMA. However, the applicant stated under paragraph 16 of the affidavit that the respondent is unemployed and her source of income is unreliable and uncertain. Thus, if the execution proceeds, the respondent will not be in a position to refund the monetary reliefs, in case the pending revision will be decided in favour of the applicant. In addition, it is not disputed that Labour Revision No. 23921 of 2024 is pending before this court. Similarly, the respondent was yet to enforce the CMA Award; and the application for stay of execution was not contested. 3 Therefore, the balance of convenience tilts in favour of the applicant. The reason is that non-granting of the application will prejudice the applicant more than the respondent. Based on the balance of convenience, the application is meritorious. In the case of Herbert Eliezar Liwal vs Bay View Properties Limited, Misc. Commercial Appl. No. 110 of 2021 (unreported), this court held as follows: - "In applying the concept of "balance of convenience" the Court makes all endeavors to protect the interest of the parties by evaluating their interests and how such are to be affected and who will be prejudiced or suffer most In this instant application, I have no doubt that the applicant stands to suffer most if the prayers are not granted ', [emphasis added] That said, and acting under section 91(3) of the ELRA, I hereby grant the order to stay the execution of the CMA Award in Labour Dispute No. CMA/DOM/DOM/34/2024/10/2024 pending the hearing and final determination of Labour Revision No. 23921 of 2024. This being a labour matter, the parties shall bear their own costs. Order accordingly. DATED at DODOMA this 18th day of November, 2024. I.D. MUSOKWA JUDGE 4 Ruling delivered in the presence of Advocate Majaliwa Wiga holding brief for Advocate Mahmoud Mwangia for the applicant; and in the absence of the 5

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