

TANZANIA / JUDGMENT

CIVIL APPLICATION NO 478 OF 2025 TANZANIA LOCAL GOVERNMENT WORKERS UNION TALGWU VS CRISPIN RAPHAEL SANGA TA SAVANA GENERAL MERCHANDISE

COURT
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1 January 2025

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IN THE COURT OF APPEAL OF TANZANIA AT PAR ES SALAAM CIVIL APPLICATION NO. 478 OF 2025 TANZANIA LOCAL GOVERNMENT WORKERS UNION (TALGWU).....APPLICANT VERSUS CRISPIN RAPHAEL SANGA T/A SAVANA GENERAL MERCHANDISE..... RESPONDENT
(Application for stay of execution of the Judgment and Decree of the High Court of Tanzania, Commercial Division at Dar es Salaam) (Morris. J J dated the 19th day of April, 2024 in Commercial Case No. 43 of 2023)

RULING

18th March, 2025 MURILIKE. J.A.: The applicant instituted Commercial Case No. 43 of 2023, on 17th April, 2023 claiming for payment of Tshs. 700,000/= being down payment made to the respondent for the supply of Polo T-shirts and Caps pursuant to the agreement for printing and distribution of T-shirts and Caps dated 4th February, 2022 and the addendum thereto dated 29th March, 2022 general damages and interest. In the cause the respondent counterclaimed for payment of Tshs. 496,000,000/= being the balance payment for the supplied Polo T-shirts and Caps, interest, general damages and costs. Commercial Case No. 43 of 2023, was heard before Hon. C.K.K. Morris, J. and the Judgment was delivered on 19th April, 2024 dismissing the applicant's case with costs and allowed the respondent's counterclaim with costs in which the respondent herein was awarded 496,000,000/=, interest at the court rate of 7% per annum from the date of Judgment to the full settlement and costs. Aggrieved by the said Judgment and Decree, the applicant filed Notice of Appeal on 13th May, 2024, well within time and served the Respondent on 15th May, 2024. Further, the applicant filed Civil Appeal No. 71 of 2025 on 10th January, 2025 and served the same upon the respondent on 14th January, 2025. While Civil Appeal No. 71 of 2025 is still pending in the Court the applicant through his counsel Kobas, O. J. Attorneys was on 21st February, 2025 served through email with the Notice of Execution requiring the applicant to appear for hearing of Execution No. 30666 of 2024 on 24th February, 2025 before Hon. C.C.K. Morris, J. The applicant was then served with the Application for

Execution No. 30666 of 2024 on 25th February, 2025, applying to attach the Applicant's account No. 116097100015 at CBA Bank, Ilala Branch. It is this application for execution that necessitated filing of the present application for stay of execution. The application is supported by an affidavit sworn by Mr. Rashid Mohamed Mtima, the applicant's Principal officer. The respondent filed affidavit in reply to contest the application. At the hearing of the application, the applicant was represented by Mr. Odhiambo Kobas, learned counsel, while the respondent had the service of Mr. George Mshumba, also learned counsel. Without wasting time Mr. Mshumba, informed the Court that he is conceding to the application, subject to security for the due performance of the decree being furnished by the applicant on the sum equal to the decretal sum through a Bank guarantee. Mr. Kobas welcomed Mr. Mshumba concession, while insisting that the applicant shall comply with the Court order on security for due performance of the decree. It is worth noting that Rule 11 (5) (a) and (b) of the Court of Appeal Rules, 2009 ("the Rules") sets the conditions which are to be satisfied before the Court can order stay of execution of the decree, sought to be challenged. It provides that: "11- (1) - (4).... N/A 11 (5) No order for stay of execution shall be made under this rule unless the Court is satisfied that: -

- (a) Substantial loss may result to the party applying for stay of execution unless the order is made. 3
- (b) Security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him." The above mentioned two conditions have to be satisfied by the applicant conjunctively, before stay is granted by the Court. Upon perusal of the Notice of Motion and affidavit in support thereof, I am satisfied that the conditions set out under Rule 11 (3) and (5) of the Rules have been met, because; One: - the applicant has already filed a Notice of Appeal seeking to challenge the decision of the High Court (Commercial Division) in Commercial Case No. 43 of 2023 in terms of annexure "B" pleaded in paragraph 3 and attached to the affidavit. Two, further applicant has filed Civil Appeal No. 71 of 2025 on 10th January 2025 and served the same upon the respondent on 14th January 2025 in terms of annexure "C" pleaded at paragraph 5 of the affidavit in support of the application. Three, the respondent has initiated execution No. 30666 of 2024 applying to attach account No. 116097100015 at CBA Bank, Ilala Branch in terms of annexure "D". Plead at paragraph 6 of affidavit in support of the application. Four, the applicant has undertaken to provide bank guarantee as security for the due performance of the decree in terms of paragraph 15 of the affidavit in support of the application. Five, the contention by the applicant that it will suffer substantial loss if a stay order is not issued from the colossal amount involved, I find that its recovery by the applicant in the event the intended appeal fails, will be difficult, thus occasioning loss of use of that amount on the part of the applicant. I am satisfied that; the applicant has fulfilled the conditions set under Rule 11 (3) (4) and (5) of the Rules. I therefore grant the application and stay the execution of the decree of the High Court, Commercial Division arising from Commercial Case No. 43 of 2023 pending hearing and determination of Civil Appeal No. 71 of 2025. It is further ordered that; the applicant should deposit a bank guarantee of TZS. 496,000,000/= within 45 days from the date of delivery of this ruling, so as to assure the satisfaction of the decree in the event the

appeal fails. The Bank guarantee to be renewable yearly. Costs to be in the cause. DATED at DAR ES SALAAM this 18th day of March, 2025. Z. G. MURUKE JUSTICE OF APPEAL The Ruling delivered this 18th day of March, 2025 in the presence of Mr. Odhiambo Kobas, learned counsel for the applicant and Mr. George Mushumba, learned counsel for the respondent; is hereby certified as a

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