

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

(CORAM: JUMA, C.J., KITUSI, J.A. And MAKUNGU, J.A.)

CIVIL APPLICATION NO. 271/05 OF 2019

SERENGETI BREWERIES LIMITED.....APPLICANT

VERSUS

JOSEPH MAIGE MASHAURI.....RESPONDENT

**(Application from the Ruling and drawn Order of the High Court of
Tanzania, (Labour Division) at Moshi)**

(Mipawa, J.)

dated the 15th day of July, 2016

in

Labour Revision No. 13 of 2015

RULING OF THE COURT

21st & 23rd September, 2022

MAKUNGU, J.A.:

At the hearing of this application for stay of execution, Mr Ally Hamza, learned advocate, represented the applicant whereas the respondent though duly served with the notice of hearing through TUICO Office on 9/9/2022, did not enter appearance thus, the hearing of the application proceeded in his absence under rule 63(2) of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules).

Submitting in support of the application, Mr. Hamza commenced his submission by fully adopting the contents of the notice of motion, the two supporting affidavits one sworn by Mr. Nuhu Mkumbukwa, an advocate acting for the applicant and the other sworn by Mr. Gwandumi Mwangómbe, the Legal Manager of the applicant and the applicant's written submission. He then briefly submitted that rule 11(5) of the Rules specified two conditions for the Court to issue an order for stay of execution; **one**, that substantial loss may result to the party applying for stay of execution unless the order is made and **two**, security has been given by the applicant for the due performance of such decree.

Mr. Hamza relying on the contents of the notice of motion and the accompanying affidavits, urged the Court to issue a stay of execution pending hearing of the appeal. He contended that if the intended execution proceeded and the respondent paid the decretal sum, he may not have the wherewithal to refund the money should the applicant win the appeal, thereby resulting in a substantial loss to the latter. He also contended that the applicant has already deposited the decretal sum in the High Court's bank account

maintained by the Bank of Tanzania to cover for payment of the decretal sum in case the intended appeal fails. He prayed the application be granted.

On the other hand, the respondent did not file an affidavit in reply to contest the application. Hence the averments in the applicant's affidavits supporting the notice of motion have gone uncontested.

We have examined the notice of motion and taken account of the founding affidavits and all its annexures in the light of the submissions made by Mr. Hamza. It is noteworthy from attached copy of the summons in respect of the application for execution that the respondent moved the High Court, Labour Division at Moshi for the payment of the decretal sum. Conceivably, once the deposited funds are released to the respondent, they may not be easily recoverable from the respondent who is an individual with no known assets in the event that the applicant succeeds in its intended appeal. Given these circumstances, we are satisfied that the application has merit and we grant it.

Thus, we order stay of the intended execution of the order of the High Court of Tanzania, Labour Division at Moshi (Mipawa, J.) dated 15th July, 2016 in Revision No. 13 of 2015 pending hearing of the intended appeal. We make no order as to costs since this is a labour matter.

It is so ordered.

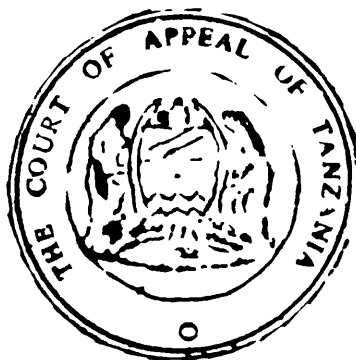
DATED at MOSHI this 22nd day of September, 2022.

I. H. JUMA
CHIEF JUSTICE

I. P. KITUSI
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

This Ruling delivered this 23rd day of September, 2022 in the presence of Ms. Modest A. Njau holding brief for Mr. Ally Hamza, learned counsel for the Applicant and Respondent is absent, is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL