

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION No. 980 OF 2024

BETWEEN

AFRICAN BANKING CORPORATION (T) LIMITED APPLICANT

VERSUS

JOVIN MGOO RESPONDENT

(Application for stay of Execution of the Decree of the High Court of Tanzania (Labour Division) at Dar es Salaam I Execution No. 25923 of 2023 (Hon. Mrio, Deputy Registrar) dated 2nd October, 2024 which arises from Revision No. 231 of 2020 (Hon. Arufani,J.)

AFFIDAVIT IN REPLY OF THE RESPONDENT

{Made under Rule 56(1) of the Tanzania Court of Appeal Rules, 2019 as amended by GN No. 368 of 2009}

I, JOVINE S. MUGOO Adult, Christian, resident of Dar es Salaam **DO HEREBY TAKE OATH** and **STATE** the following:-

1. That, I am the Respondent herein and I was the Decree Holder in the Labour Execution No. 25923 of 2023 and Respondent in the Labour Revision number 231 of 2020 at the High Court of Tanzania Labour Division at Dar es Salaam thereon as such I am very conversant with the facts I am going to depose hereunder.
2. That, I have read and understood the affidavit of **Nyanjala Mtebe** in support of the Notice of Motion for an application for stay of execution and I hasten to state that the affidavit is devoid of merits.

3. That, the contents of paragraphs 1, 2 and 3 Affidavit are noted. The Respondent wishes to state further that the decretal amount included also subsistence allowance which kept on accruing daily.
4. That, the contents of paragraph 4 of the Affidavit are noted to the extent that the Applicant was granted leave. The rest of the contents are disputed and the Respondent wishes to state that, the Applicant had lodged an Appeal before this Court and it was struck out for being filed out of time and she even had obtained orders for stay of Execution previously before this court staying the same decree.
5. That, the contents of paragraph 5 of the Affidavit are noted to the extent that Hon. Kassian ordered stay illegally. The rest of the contents are disputed and the Applicant is put to strict proof thereof. The Respondent wishes to state further that, before Hon. Kassian had issued that order, he had given enough time for the Applicant to seek Stay of Execution to the Court of Appeal and the Applicant failed while insisting that she was time barred. *Copy of the proceedings and orders of the Labour Court are herein attached as Annexure DIRM - 1. Leave of the Court shall be craved for them to form part of this Affidavit in reply.*
6. That, the contents of paragraph 6 of the Affidavit are noted. The Respondent wishes to state further that the Applicant was even aware that Hon. DR Kassian had acted out of his jurisdiction and that the proper forum for her to apply for stay orders is in this Court.
7. That, the contents of paragraph 7 of the Affidavit are noted to the extent that the Deputy Registrar ordered transfer. The rest of the contents are disputed and the Applicant is put to strict proof thereof. the Respondent wishes to state further that, the said Execution was on going and it kicked off in the year 2023. The Applicant has been aware of it at all material times from the date summons were issued, the day a garnishee order Nisi was issued, the day Garnishee Order Absolute was issued and still she never applied for stay hence lodging a stay of Execution now will amount to abuse of the Court process as it started long ago and she was aware of it. *Copies of the Ganishee Orders and letters from*

the bank are herein attached as Annexure DIRM - 2. Leave of the Court shall be craved for them to form part of this Affidavit in reply.

8. That, the contents of paragraph 8 of the Affidavit are vehemently disputed. The Applicant has at all material times attended and argued her case and even on the date that order was issued she was there.
9. That, the contents of paragraphs 9 and 10 of the Affidavit are vehemently disputed for being untrue and unfounded. The Respondent wishes to state further that, the Applicant had been submitting before Hon. Kassian, Hon. Mrio and Hon. Mlyambina J., that they had failed to lodge an Application for stay in this Court simply because they were time barred and prayed for the Labour Court to issue stay basing in the circumstances of the case which they termed to be unique the fact which is not true.
10. That the contents of paragraphs 11, 12 and 13 of the affidavit are vehemently disputed for being irrelevant and facts known to the Applicant herself intended to mislead the court.
11. That, in addition to the above paragraphs the Respondent wishes to state that the applicant is abusing the court's procedures and delays justice.

Dated at Dar es Salaam this 28th October, 2024.

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JOVINE S. MUGOO

VERIFICATION

I, JOVINE S. MUGOO, being the Respondent **DO HEREBY VERIFY** the contents in paragraphs **1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11** are true to the best of my knowledge.

Verified at Dar es Salaam this 27th October, 2024

.....
JOVINE S. MUGOO

SWORN and delivered
at Dar es Salaam by the said **JOVINE S. MUGOO**
who is introduced to me by
DISMAS RAPHAEL, Advocate who is
known to me personally in my
presence this 27th October, 2024.

.....
DEPONENT

BEFORE ME:

NAME:

ADDRESS:

TITLE:

SIGNATURE.....

COMMISSIONER FOR OATHS

LODGED in the Registry at Dar es Salaam this..... day of 28th October, 2024.

REGISTRAR

Copy to be served upon: -

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