**THE JUDICIARY OF TANZANIA**

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT MWANZA**

**MISCELLANEOUS LABOUR APPLICATION NO. 000015437 OF 2026**

**JAMBO FOOD PRODUCTS COMPANY LIMITED ..... COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF**

**VERSUS**

**HASSAN ISSA SHIKILA ..... RESPONDENT / DEFENDANT**

**JUDGMENT**

**ROBERT, J**

RULING 14/7/2026 & 4/9/2026 ROBERT, J. The Applicant, Jambo Food Products Company Limited, moved this Court by Chamber Summons under section 92(3) of the Employment and Labour Relations Act, Cap. 366 R.E. 2023, and rules 24(1), (2) and (3) of the Labour Court Rules, G.N. No. 106 of 2007. It seeks a stay of execution of the Garnishee Order Absolute issued by the Deputy Registrar on 10th June, 2026 in Labour Execution No. 9140 of 2026, pending determination of Miscellaneous Application No. 11977 of 2026 and Application No. 11672 of 2026. The application is supported by the affidavit of Prosister Rogasian, the Applicant's Human Resources Officer. The material background is that, on 13th April, 2026, the Commission for Mediation and Arbitration delivered an award in favour of the Respondent. The Applicant lodged Revision Application No. 11509 of 2026 to challenge that award. Meanwhile, the Respondent commenced execution proceedings. A Garnishee Order Nisi was issued against the Applicant's account at NMB Bank Plc and was subsequently made absolute on 10th June, 2026 for TZS 13,020,000/=. The Applicant

maintains that it was not served with the process preceding the order absolute and learnt of that order through the Bank. It had already filed Application No. 11672 of 2026 for stay of execution and Miscellaneous Application No. 11977 of 2026 to lift or set aside the Garnishee Order Nisi. On 17th June, 2026, this Court granted an interim ex parte stay of the Garnishee Order Absolute pending inter partes determination of the present application. The Respondent opposed the application through a counter-affidavit. His position is that notice to show cause was unnecessary because execution was commenced within one year of the award. He further asserts that, before the order nisi was made absolute, summons was taken for service upon the Applicant at Shinyanga, but the Applicant refused service. He also contends that the Applicant has not demonstrated substantial loss and has neither furnished nor undertaken to furnish security for due performance of the award. The Court directed that the main application and the preliminary objection be argued by written submissions. Mr. Ernest Alfred Mhagama, learned advocate, appeared for the Applicant, while Mr. Innocent Kisigiro, learned advocate, represented the Respondent. I have carefully considered the affidavits, annexures and the respective submissions. For completeness, Miscellaneous Application No. 11977 of 2026 was determined by this Court on 10th July, 2026. Consequently, the prayer in the present application, so far as it was tied to the pendency of that application, has been overtaken by events. What remains capable of practical determination is whether the Garnishee Order Absolute should be stayed pending determination of Application No. 11672 of 2026, which seeks stay of execution pending Revision Application No. 11509 of 2026. The Respondent originally raised three grounds. In his written submissions, however, he expressly abandoned the first ground, which alleged contravention of section 56(b) of the Labour Institutions Act, Cap. 300 R.E. 2023. That ground requires no determination. The two surviving grounds are, first, that the supporting affidavit is incurably defective for failure to contain a statement of the legal issues and the relief sought, contrary to rule 24(3)(c) and (d) of the Labour Court Rules; and, secondly, that the application is frivolous and vexatious within the meaning of rule 51(2) of those Rules.

Counsel for the Respondent submitted that rule 24(3) is couched in mandatory terms and that omission of legal issues and reliefs renders the affidavit, and consequently the application, incompetent. He relied, among others, on Adnan Mehboob Sadiq and Two Others v. Aloyce Felix Maro and Another, Civil Appeal No. 467 of 2022 [2024] TZCA 1118; Chama cha Kutetea Haki na Maslahi ya Walimu Tanzania (CHAKA MWATA) v. Registrar of Organisations and the Attorney General, Civil Appeal No. 170 of 2023 [2025] TZCA 112; and Christabella Sowela and Others v. Treasury Registrar, Miscellaneous Labour Application No. 1395 of 2026 [2026] TZHCLD 64. For the Applicant, Mr. Mhagama submitted that the objection overlooks the actual contents of the affidavit. He referred to the paragraphs which state the grounds for stay and the express prayer to stay the Garnishee Order Absolute pending the identified applications. Counsel relied principally on Serengeti Breweries Limited v. Hector Sequeira, Civil Appeal No. 137 of 2025 [2026] TZCA 474, and urged the Court to consider substance rather than labels or headings. He argued, in the alternative, that any omission was curable under the overriding objective. A preliminary objection must raise a pure point of law which proceeds on the assumption that the facts pleaded by the opposite party are correct and which, if upheld, is capable of disposing of the matter without receiving evidence. This familiar test stated in Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd [1969] E.A. 696 remains applicable. Rule 24(3) of the Labour Court Rules requires the affidavit supporting an application to clearly and concisely set out the names, descriptions and addresses of the parties, a statement of the material facts in chronological order, a statement of the legal issues arising from those facts, and the relief sought. The requirement is important. It enables the respondent and the Court to understand both the factual and legal foundation of the application. The question, however, is one of substantive compliance upon a fair reading of the affidavit as a whole. The rule does not prescribe a special heading, formula or sequence of words for expressing the legal issues and relief. In the present affidavit, the deponent identifies the impugned Garnishee Order Absolute, the pending proceedings, the alleged want of an opportunity to be heard,

the need to preserve the subject matter, the risk that the pending proceedings may be rendered nugatory, the alleged irreparable loss, and the balance of convenience. Those are the legal controversies arising from the pleaded facts. The affidavit then expressly asks the Court to stay execution of the Garnishee Order Absolute pending determination of Miscellaneous Application No. 11977 of 2026 and Application No. 11672 of 2026. It concludes by repeating that relief. Accordingly, it cannot be said that the affidavit contains only a chronological narrative or leaves the reader to invent the Applicant's case. The legal issues and the relief are expressly discernible from its text. The present facts therefore differ materially from authorities in which the affidavit omitted those matters altogether. They fall within the approach adopted in Serengeti Breweries Limited v. Hector Sequeira (supra), where the Court of Appeal examined the substance of the relevant paragraphs to determine compliance with rule 24(3)(c) and (d). The second ground of objection is therefore without merit. The third ground asserts that the application is frivolous and vexatious. Whether that description is justified cannot be determined as an abstract point of law. It requires evaluation of the competing facts concerning service, the status of the attached funds, the pending proceedings, possible prejudice and the requirements for stay. Indeed, the Respondent's own submissions on this ground travel into the merits. The ground does not satisfy the Mukisa Biscuit test and is not a proper preliminary objection. It is therefore overruled. In consequence, the first ground having been abandoned, the second ground is dismissed for want of merit, and the third ground is overruled for not constituting a pure point of law. I now turn to the merits of the application. Section 92(3) of the Employment and Labour Relations Act empowers the Labour Court, upon application, to stay enforcement of an award pending its decision. The fact that the immediate mechanism of enforcement is a Garnishee Order Absolute does not deprive the Court of that statutory power. A stay of enforcement necessarily operates upon the execution process through which the award is being enforced. The present application is unusual because Application No. 11672 of 2026 already seeks the substantive stay of execution pending revision. The present prayer is

therefore essentially preservatory: it asks the Court to prevent payment under the subsequently issued order absolute before the earlier stay application is heard. The Court must avoid finally determining Application No. 11672 of 2026 in these interlocutory proceedings. The proper inquiry is whether temporary preservation is necessary to ensure that the pending application remains effective, while adequately protecting the Respondent as the successful party before the CMA. The Respondent correctly submitted that commencement of execution within one year does not ordinarily require a notice to show cause under Order XXI rule 22 of the Civil Procedure Code. That argument, however, does not finally answer the separate complaint concerning service of the process leading to the order absolute. On that matter the affidavits conflict: the Applicant denies service, whereas the Respondent relies on attempted service and alleged refusal. It would be unsafe and unnecessary to make a final pronouncement on that disputed fact in this application. It is sufficient that the complaint is bona fide and forms part of pending proceedings concerning execution. There is also no dispute that Revision Application No. 11509 of 2026 and Application No. 11672 of 2026 were filed before the Applicant learnt that the order nisi had been made absolute. Nor is it disputed that the order absolute directs NMB Bank Plc to release TZS 13,020,000/= from the Applicant's account. If payment is made before Application No. 11672 of 2026 is heard, that application may be overtaken by the very event it seeks to prevent. This is the practical prejudice demonstrated by the Applicant. As observed by the Court of Appeal in Muhimbili National Hospital v. Constantine Victor John, Civil Application No. 52 of 2013 [2014] TZCA 2147, execution undertaken while proceedings capable of affecting it await determination may, in an appropriate case, be stayed so that the parties' rights are first resolved on the merits. The Court has not lost sight of the Respondent's right to enjoy the fruits of the award. A stay is discretionary and must not become an instrument for indefinite delay. The Applicant filed the present application promptly after notification of the order absolute, and the amount in question remains identifiable in the hands of the garnishee. The balance can therefore be maintained through





a narrow, time-bound order preserving that sum only until Application No. 11672 of 2026 is determined. The Respondent further argued, on the strength of Ongujo Wakibara Nyamarwa v. Beatrice Greyson Mmbaga, Civil Application No. 200 of 2021 [2022] TZCA 732, that all requirements for stay, including security, must be cumulatively satisfied. The importance of security is accepted. In the peculiar circumstances of this case, however, the attached TZS 13,020,000/= itself constitutes complete and readily realisable security. The Applicant is not to regain free use of that sum during the stay; the Bank will retain it under attachment but will not release it to either party. Requiring an additional bank guarantee for the same amount would duplicate security without a corresponding necessity. The preservation order thus protects the Respondent more effectively than a bare undertaking. I accordingly find that the Applicant has shown sufficient cause for a limited stay of enforcement of the Garnishee Order Absolute pending determination of Application No. 11672 of 2026. This finding is strictly interlocutory. It expresses no concluded view on the merits of Revision Application No. 11509 of 2026, Application No. 11672 of 2026, or the disputed service in the execution proceedings. For the foregoing reasons, the Court makes the following orders: 1. The Respondent's first ground of preliminary objection is marked abandoned. 2. The second ground of preliminary objection, founded on rule 24(3)(c) and (d) of the Labour Court Rules, G.N. No. 106 of 2007, is dismissed. 3. The third ground, alleging that the application is frivolous and vexatious under rule 51(2), is overruled for not constituting a pure point of law. 4. The application is allowed to the limited extent that execution and enforcement of the Garnishee Order Absolute issued on 10th June, 2026 in Labour Execution No. 9140 of 2026 is stayed pending hearing and determination of Application for Stay of Execution No. 11672 of 2026. 5. During the subsistence of this stay, NMB Bank Plc shall preserve and continue to hold under attachment the sum of TZS 13,020,000/= in the Applicant's account. The Bank shall not release that sum to the Respondent, the Applicant, or any other person except pursuant to a further order of this Court. 6. For avoidance of doubt, this stay shall automatically lapse upon delivery of the





ruling in Application No. 11672 of 2026, unless the Court in that application orders otherwise. 7. Application No. 11672 of 2026 shall be accorded priority and fixed for hearing on the earliest available date so that the Respondent is not kept from the fruits of the award longer than is necessary. 8. Given that this is an employment dispute, each party shall bear its own costs. It is so ordered. K. N. ROBERT JUDGE 9/4/2026

**Dated at MWANZA** this 4th of September 2026 .



K. N ROBERT

**JUDGE OF THE HIGH COURT**