

3. *“That a case filed before the Employment Tribunal on the 20th April 2021 against the Applicant for a claim of unjustified termination, payment of employment benefits and compensation for length of service by HAVA YAKUB, an employee who was employed with us for less than one year.*
4. *That the Applicant was represented by Leslie Boniface and he was instructed to defend the Applicant before the Employment Tribunal.*
5. *That we received a notice from the Employment Tribunal dated the 20th April 2021 and 6th September 2021. The latter stated that there was going to be an ex-parte hearing set on the 15th October 2021. We forwarded all the notices to Mr. Boniface, as was the procedure but in respect of the second one, the Applicant was surprised at the notice, as we had counsel, so the Applicant forwarded the notice to him on the 13th September 2021 and we were informed that it would be sorted out and that we would be notified of the next date.*
6. *That subsequently we did not hear from him and as this was not unusual, the Applicant was under the impression that the matter had been resolved, and that Mr Boniface would inform us of the next date. Which he did not.*
7. *The next we heard of this matter was on the 14th December 2021 when the Applicant was served with a Warrant to Levy and the process servers took our donated vehicle, a Jeep Dong Feng S33423 (hereinafter the ‘Vehicle’) and informed us that it would be sold to satisfy a judgment. A copy of the Warrant to Levy is attached to this affidavit.*
8. *The Applicant has had no notice and was not served this judgment and was never served a copy of same until this month upon request, further at no point was the Applicant informed that the ruling had been delivered or that there was a debt outstanding.*
9. *That the Applicant tried to contact Mr Boniface several times to no avail and it is only through other channels that the Applicant found out that Mr Boniface did not have a license and had not had one for some time. Not only did Mr Boniface not inform the Applicant of his unlicensed status, but failed to make provision for another counsel or representative to attend our case or inform the Applicant that it should send a representative.*
10. *That the Applicant has filed an application for the ex-parte judgment to be set aside and for a hearing inter-partes to be heard and a stay of execution. A copy of the application for the ex-parte judgment to be set aside and for a*

hearing inter-partes to be heard and the Stay of Execution are shown to me produced and exhibited herewith.

11. *The Applicant verily believes that it will have a good chance of having the ex-parte order set aside and to hear the matter inter-partes as the claims as above were never challenged and the judgment, despite being only nine months after her 'termination' comprises of over sixteen months of salary, and the Applicant believes that on an inter-partes hearing, this would not be maintainable.*
12. *The Vehicle has been seized but not yet sold, but the sale is pending and could happen within the week. That should the stay not be heard urgently the Vehicle will be sold and would render the Applicant's applications nugatory.*
13. *That should the stay not be heard urgently and the Vehicle sold, it would severely cripple the Society's ability to conduct its mission as the Vehicle was donated. Further it could affect or deter prospective donations and cause irreparable hardship and loss.*
14. *That Ms YAKUB was only earning approximately SCR 14,876/- and the Applicant verily believes that if this Application is not heard urgently, and the stay is not heard in time and the Applicant is successful in its application, Ms YAKUB would have great difficulty in paying back the money. Ms YAKUB's judgment comprises of sixteen months of her previous salary, and should the judgment be executed but subsequently overruled, Mrs YAKUB has no real prospect of paying back the money to the Applicant.*
15. *That if the Applicant's stay of Execution is not heard by this Honourable Court expeditiously, the said Order may be executed and the Applicant will suffer substantial loss and prejudice which could not be compensated in damages and would also render the principal case and the Applicant application to set aside the said Order nugatory.*
16. *On the basis of matters aforesaid, it is urgent and necessary, just, fair and in the best interest of justice that my application for stay of execution is heard urgently.*
17. *The averments are true to the best of my information, knowledge and belief.*
18. *I, therefore, pray accordingly."*

[3] The Respondent did not object to the application being heard as a matter of urgency but objected to the stay of execution and filed the following affidavit by Abdul-Gafour Yakub to that effect:

“AFFIDAVIT-IN-REPLY

I, Abdul-Gafoor Yakub, of Vista Do Mar, Glacis, Mahé, Seychelles sincerely and truly affirm as follows –

- 1. That I am the deponent above-named and I am authorised to represent the Respondent herein Hava Yakub who is my wife, pursuant to a General Power of Attorney. A copy of the Power of Attorney is produced and exhibited herewith.*
- 2. That I have taken cognizance of the affidavit of Marie-May Esparon dated 14 February 2022 in support of the application of the Applicant – Red Cross Society – for a stay of execution of the judgment of the Employment Tribunal of Seychelles in case ET 14/2021, Hava Yakub v Red Cross Society of Seychelles (“RCS affidavit”) and save as specifically admitted herein, I deny the said RCS Affidavit and object the application for stay of execution (“Application”)*
- 3. That I admit paragraph 3 and 4 of RCS Affidavit.*
- 4. That I admit paragraph 5 of RCS Affidavit to the extent that an ex-parte hearing was set for and heard on 15 October 2021 in case ET 14/2021, Hava Yakub v Red Cross Society of Seychelles. The rest of the matters contained in the said paragraph 5 of RCS Affidavit are between the Applicant and their Counsel and have not been established.*
- 5. That I am advised by Counsel, Alexandra Madeleine (“Counsel”), and verily believe the same to be true that the Respondent who is the Judgment Creditor should not be penalized by the latches and omissions on the part of the Applicant and their Counsel in defending the case before the Employment Tribunal and exhausting available remedies post judgment.*
- 6. That I deny paragraph 6 of RCS Affidavit and state the matters stated therein are between Applicant and their Counsel are not established. I refute paragraph 6 of their Affidavit.*

7. *That I admit paragraph 7 of RCS Affidavit to the extent that the Respondent filed for execution of the Judgment of the Employment Tribunal which was in her right to do so.*
8. *That I state that I deny paragraph 8 and 9 of RCS's Affidavit in that the matters averred therein are between the Applicant and their Counsel. I am also advised by Counsel and verily believe the same to be true since that it was the duty of the Applicant to follow up their case with their Counsel and/or the Tribunal. Their omission to do so and alleged laches on part of Counsel is not the fault of the Respondent and should not prevent the Respondent from executing Judgment.*
9. *That I deny paragraph 10 of RCS Affidavit and state that I am advised by Counsel verily believe the same to be true that although the Employment Tribunal may regulate its own proceedings in relation to matters pending before it, the Employment Tribunal do not have the power to set aside the execute Judgment. I further state that the Applicant has a remedy from Judgments of the Tribunal and has failed to exhaust same through no fault of the Respondent.*
10. *That I deny paragraph 11 of RCS Affidavit and state that I am advised by Counsel verily believe the same to be true, that the laches and omissions on the part of the Applicant and their Counsel do not amount to good grounds for this Court to exercise jurisdiction to grant a stay of execution of the Judgment in circumstances where the appropriate remedies have not been exhausted and where it is the duty of the Applicant to defend their case before the Employment Tribunal and to prosecute the remedies available to them after the said judgment.*
11. *That I admit paragraph 12 of RCS Affidavit and state further that I am advised by Counsel and verily believe the same to be true that:*
 - (a) *the vehicle has been seized in accordance with legal procedures and has been validly done following a judgment being entered in favour of the Respondent;*
 - (b) *the Applicant's application before the Employment Tribunal have no merits and no chances of success as the Employment Tribunal has no jurisdiction to set aside its own judgment ;*
 - (c) *that this Court has no jurisdiction to grant a stay of execution where there is no appeal filed against the said judgment;*

12. *That I deny paragraph 13 of RCS Affidavit and state that I am advised by Counsel and verily believe the same to be true that the Applicant as an employer and now Judgment Debtor has to fulfil its legal obligations. Non-compliance with its legal obligations are more likely to impair its ability to conduct its mission in the long run and that no proof of irreparable hardship has been made out by the Applicant. More hardship and prejudice is likely to be caused to the respondent if execution does not proceed.*
13. *That I deny paragraph 14 of RCS Affidavit and state that I am advised by Counsel and verily believe the same to be true that the matters stated therein are not for consideration by this Court as it does not have jurisdiction to grant a stay of execution in absence of an appeal.*
14. *That I deny paragraph 15 of RCS Affidavit and state that I am advised by Counsel and verily believe the same to be true if the Court accepts jurisdiction to grant a stay of execution in absence of an appeal, the Respondent will be caused further hardship and prejudice in being denied the fruits of the judgment rendered in her favour.*
15. *That I deny paragraph 16 of RCS Affidavit and state that I am advised by Counsel and verily believe the same to be true there is no legal basis for the said application and that this Court should dismiss the application with costs.*
16. *That the matters stated herein are true to the best of my information, knowledge and belief.”*

[4] Learned counsel for the Applicant filed the following submission in support of the Application for stay of execution.

1. *“It is trite that an appeal does not operate as a bar to execution of a judgment. (Section 230 of the Seychelles Code of Civil Procedure). The correct procedure is by way of an application to stay the execution of a judgment. Therefore, in considering whether or not to grant a stay of execution recourse must be had to case law.*
2. *The most notable case is that of Macdonald Pool v Despilly William, Civil Side No. 244 of 1993 which determined that when considering whether or not to grant a stay of execution, the considerations are the following five grounds:-*

- a. *Where there is a substantial question of law to be adjudicated upon at the hearing of the appeal;*
 - b. *Where special circumstances so require;*
 - c. *Where there is proof of substantial loss that may otherwise result;*
 - d. *Where if the stay is not granted the appeal if successful, would be rendered nugatory;*
 - e. *If a stay is granted, and the appeal fails, what are the risks that the respondent will be unable to enforce the judgment.*
3. *The above considerations are detailed hereunder.*

Where there is a substantial question of law to be adjudicated upon at the hearing of the appeal

4. *The main thread of argument in this matter was whether the Respondent herein was unlawfully terminated. The determination of this ought to have been on an equal footing, in the same arena, but the Applicant was unable to defend the suit for reasons beyond their control as stated in its affidavit.*
5. *Whilst it is admitted that procedure allows for a matter to proceed ex parte where the other party fails to put up an appearance, Section 69 of the Seychelles Code of Civil Procedure), the reason for non-appearance by the then Respondent (the Applicant herein) was due to lack of guidance from counsel. The staff of the Red Cross Society are not legally trained and have very little exposure to the administration of justice. The functions and operations of the Applicant set them far from the inner workings of the judiciary and the averments that failure to follow up on their case with their counsel or the Tribunal are redundant as the Tribunal and Counsel for the Respondent were aware that Counsel previously engaged by the Applicant was unlicensed at the time of the ex parte hearing.*
6. *It is worth noting that in some instances procedure may operate against the interests of justice. As such, it would be a gross disservice to the interests of justice to allow the Respondent to cause hardship to the Applicant by proceeding with the sale of the seized vehicle to obtain an unjustly awarded sum by the Employment Tribunal.*
7. *It is in the interests of justice that the matter be reheard so that the Applicant can make its defence. The Applicant would be remiss to prejudge MA 1/2022 arising in ET 14/2021 before the Employment Tribunal.*

8. *In order to meet this requirement, the Applicant has not merely made the statement that there is some prospect of success, the Applicant has laid down the grounds on which they are seeking the application in MA 1/2022 arising in ET 14/2021 in sufficient detail, and prima facie should satisfy this Honourable Court that there are serious questions of law and fact that the Employment Tribunal ought to consider and rule upon. It is not however for the Court to prejudge the MA 1/2022 arising in ET 14/2021 but only to make an assessment of whether the Applicant has a good chance of success or the Applicant may be ruined if the stay is denied or if the application has little chance of succeeding.*
9. *The Employment tribunal has the power to conduct proceedings in whatever manner it considers most appropriate, and thus does have the mandate and jurisdiction to set aside an ex-parte ruling where an application is made before it.*
10. *It is the Applicant's humble submission that their application in MA 1/2022 arising in ET 14/2021 raises serious questions of law and facts to be dealt with by the Employment Tribunal and that by virtue of having averred their arguable case and the prospect of success, the Applicant has met this initial requirement.*

Where special circumstances so require and where there is proof of substantial loss that may otherwise result

11. *The Applicant is a voluntary relief society and is dependent on donations for its operations. The vehicle seized for sale by levy, a jeep Dong Feng S33423, was a donation to the Applicant and an integral part of its operations and service of the community, both of which have been limited since the seizure. The judgment given ex parte was highly prejudicial in that it awarded the Respondent a sum of SCR 252,574.62. The award is likely to be reconsidered should the application in MA 1/2022 arising in ET 14/2021 be granted.*
12. *Should the stay be denied and the vehicle sold, prior to the final disposal of the application before the Employment Tribunal, there is a possibility that the Respondent will be indebted to the Applicant and be unable to offer much respite.*
13. *Should the appeal be unsuccessful, the Respondent may pursue the sale by levy of the vehicle, and the chances of the Judgment of the Employment Tribunal taking effect would not be inordinate.*

14. *Furthermore the special circumstances in this case is not an everyday occurrence. The then Counsel of the Applicant had had his licence suspended, this was not within the public knowledge and the counsel failed to notify their client. The Applicant had no reason to believe that their counsel would not attend their case.*
15. *It is imperative, especially when counsels, as officers of the court, are derelict in their duty, that the clients recourse to justice are not denied.*

Where if the stay is not granted the appeal if successful, would be rendered nugatory

16. *In considering whether or not to grant the stay, the Court must also consider the balance of convenience, hardship or loss the parties may suffer. The Applicant humbly submits that in the event that there is execution the likely injury it would suffer will be much greater than any likely to be suffered by the Respondent if the stay is not granted. The Applicant is facing loss of an essential vehicle in the provision of its services to the society at large; the Respondent on the other hand merely maintains the status quo.*
17. *Should the stay be refused, and the application before the Employment Tribunal (MA 1/2022 arising in ET 14/2021), succeed the Respondent will face great hardship in that she will have to restore the Applicant to the state they were in before the application.*

If a stay is granted, and the appeal fails, what are the risks that the Respondent will be unable to enforce the judgment

18. *There is no risk that the Respondent be unable to enforce her judgment should the application in MA 1/2022 arising in ET 14/2021 be unsuccessful. The subject matter of this application is a vehicle, which is currently in the safekeeping of this Honourable Court.*
19. *As submitted above, should the stay be granted and the appeal be unsuccessful, the Applicant will follow the directives of the Employment Tribunal, after exhausting all legal avenues available to it. However, should the Applicant be denied this application not only would it be greatly inconvenienced, but the whole application in MA 1/2022 arising in ET 14/2021 before the Employment Tribunal would be rendered nugatory.*

20. *Ms YAKUB's judgment comprises of sixteen months of her previous salary, and should the judgment be executed but subsequently overruled, Mrs YAKUB has no real prospect of paying back the money to the Applicant.*

If balance of convenience

21. *The Applicant humbly submits that as per Pool v Williams, it has made all the required averments and substantiated same for this application.*

22. *On the basis of the above, this application should be granted and if a stay is refused, and the application before the Employment Tribunal succeeds, the risk to the Respondent is such that she would not be inordinately inconvenienced. The balance of convenience firmly lies with the Respondent.*

[5] Learned counsel for the Applicant moved the Court to stay the execution of the judgment of the Employment Tribunal, pending determination of the application to set aside the ex-parte judgment.

[6] Learned counsel for the Respondent made the following submission in reply:

1. *On 12th November, 2021 the Employment Tribunal ("ET") gave an ex-parte judgment in favour of the Respondent in the sum of SR. 252,574.62/- . Having lawfully obtained Judgment, the Respondent initiated procedures for the execution of the Judgment of the Employment Tribunal and on 14 December 2021 a warrant to levy was served on the Applicant. The process servers seized one Jeep Dong Feng vehicle registration S33423 owned by the Applicant.*
2. *Having failed to file an appeal against the ex-parte Judgment, the Applicant simultaneously filed an application for setting aside of the ex-parte judgment before the Employment Tribunal and an application for stay of execution of the Judgment before this court.*
3. *The application for stay of execution of the ET Judgment is the subject of these submissions. The application is dated 14th January 2022 and was filed on 18th January 2022.*

LAW

o Employment ACT

4. *In terms of clause 3 [Jurisdiction] of schedule 6 to the Employment Act, the Tribunal has exclusive jurisdiction to hear and determine employment and labour related matters that have not been successful at mediation. In terms of clause 4 [Appeals] any person against whom judgment has been given by Tribunal may appeal to the Supreme Court subject to the same conditions as appeal decisions of the Magistrates Court. The tribunal has power to summon any persona appearing before it on oath and may require any person to produce any document which the tribunal considers relevant [clause 5 -Power of the Tribunal]. In proceeding before the Tribunal, the tribunal has the power to conduct proceedings in whatever manner if considers most appropriate. [clause 6 - Proceedings of the Tribunal].*

o Courts Act

5. *Section 43 (3) of the Court Act, provides for relations to appeal from the Magistrates Court that “No appeal under this section shall operate as a stay of execution, but the court, or after an appeal has been lodged, the Supreme Court may stay execution on such terms as to security, costs and otherwise as may be just.”*

o Courts Act (Magistrates Court) Appeal Rules

6. *The Courts Act (Magistrates Court) Appeal Rules applies to appeals from an order or decision of a tribunal where the Act (or regulations made thereunder) allowing such appeal is silent on the procedure for such appeals [rule 27]. The said rules [rule 5] provides that any party desiring an extension of the time prescribed for taking any step may apply to the Supreme Court by motion and such extension as is reasonable in the circumstances may be granted on any ground which the supreme court considers sufficient.*

o Magistrates' Courts(Civil Procedure) Rules

7. *In terms of rule 22 of the Magistrates' Court (Civil Procedures) Rules [Setting aside judgment given ex-parte] a party against whom an ex-parte judgment has been given may apply to the court to set aside the judgment within one month after the date of the judgment if the case has been dismissed, or within one month after execution has been effected if judgment has been given against the defendant if the court is satisfied that summons was not duly served or that the party was prevented by any sufficient cause from appearing when the suit was called on for hearing.*

o Stay of Execution

8. *In the case of **Elmasry v Margaret Hua Sun** (supra), the Seychelles Court of Appeal laid down guidelines for a decision on a stay of execution of a money judgment taking into considerations the provisions of the Sections 230 of the Seychelles Code of Civil Procedure and Rule 20(1) of the Seychelles Court of Appeal Rules. The same guidelines were followed by the Supreme Court in the application for stay of execution in **Vijay Construction(Pty) Ltd v Eastern European Engineering Limited** as follows:*

"C has obtained a money judgment against D who appeals and applies for a stay of execution. C objects. The court must ask the following questions:

Q1 Has D satisfied me that there is a substantial question of law to be adjudicated upon at the hearing of the appeal and that his appeal has a good prospect of success?

 If yes, proceed to Q2. If no, a stay should not be granted.

Q2 Has D satisfied me that he will be ruined, or his appeal otherwise be stifled if forced to pay C immediately instead of after the (unsuccessful appeal?-

Q3 Has D satisfied me that there is no reasonable probability that C will be able to repay the monies paid to C by D

If yes , a stay should be granted, subject to considering the answers to Q4.

If no, a stay should not be granted.

Q4 What are the risks that C will be unable to enforce the judgment if the stay is granted and D's appeal fails? Depending on the extent of that risk and other relevant circumstances can there be a compromise solution: payment of all or part of the relevant sum into court to await determination of the appeal; a stay only of part of the judgment sum; provision of security for part of C's payment to D? A compromise solution should be last resort, the basic rule being that a money judgment must be complied with, so that a claimant is entitled to recover the money straightaway and not to suffer further losses or lost opportunities in the period till the appeal is heard."

SUBMISSIONS

- 9. It is submitted that the application raises threshold issues of the jurisdiction. First, whether the Court has jurisdiction to entertain the application for a stay of execution of the ET judgment. By operation of clause 4 schedule 6 Employment Act read with rule 27 of the Courts Act (Magistrates Court) Appeal Rules and Section 43 (3) of the Courts Act, an appeal should have first been filed against ET Judgment. There can be no question of applying for a stay of execution of Judgment in the absence of an appeal. And even if an appeal is filed, a stay of execution is not automatic. Since no appeal was filed within the prescribed time limit of 14 days from the date of the ET judgment (in circumstances where the Applicant could have filed an application for leave to appeal out of time under rule 5 of the Courts Act (Magistrates Court) Appeal Rules, this court should refuse jurisdiction and dismiss the application for stay of execution. The merits of the application do not fall to be determined.*

10. *Should this court find that it has jurisdiction to hear and determine the application, then it is submitted that there are no merits in the application. As submitted above, stay of execution is not automatic. In applying the guidelines set by the Seychelles Court of Appeal in the **Elmasry case** (supra) the application is such that it must be dismissed as there is no appeal filed and none of the conditions are fulfilled namely it has not been established that there is (i) a substantial question of law to be adjudicated upon at the hearing of the appeal and that the appeal has a good prospect for success (ii) that he will be ruined, of his appeal otherwise be stifled to pay C immediately instead of after the unsuccessful appeal? (iii) that there is no reasonable probability that C will be able to repay the monies paid to C by D and (iv) What are the risks that C will be unable to enforce the judgment if the stay is granted and D's appeal fails?.*
11. *In fact the application in relation to which the Applicant seeks a stay of execution of the ET judgment is an application to set aside an ex-parte judgment ("set aside application") before the Employment Tribunal and not before this Supreme Court. It is submitted that the set aside application do not have any good chances of success because the Employment Tribunal do not have the jurisdiction to set aside its own judgment. The Employment Tribunal's jurisdiction is limited to labour related matters that have not been successful at mediation and a party dissatisfied with a judgment of the tribunal has one remedy, that is an appeal against the judgment to the Supreme Court in accordance with the provisions of the law conferring the right of appeal and the Magistrates Court rules. The power conferred under rule 22 of the Magistrates' Court (Civil Procedures) Rules to set side a judgment given ex-parte is a power given to the Magistrates Court. The Employment Tribunal do not have the same power as the Magistrates' Court to set aside its own judgment. The power of the employment tribunal to conduct proceedings in whatever manner it considers most appropriate do*

not include the power to set aside a judgment after delivery. The employment Act is explicit on the available remedy and that is an appeal.

- 12. Even if this Court were to find that the Tribunal enjoys the same power as the Magistrates Court by the mere fact that it is presided by a Magistrate (irrespective of it being set up as an informal tribunal for the settlement of labour disputes), on facts alone the set aside application cannot stand as it has not been made within 1 month after execution has been effected.*
- 13. Further, the court cannot be satisfied that summons was not duly served on the Applicant or that it was prevented by any sufficient cause from appearing when the suit was called on for hearing. As averred by the Applicant paragraph 5 of the supporting Affidavit of Marie- May Esparon, by notice of dated 6th September 2021 the Applicant was duly informed that the case had been set for ex-parte hearing. Not only did they not exercise any diligence to ascertain from the Employment Tribunal as to why the case was set ex-parte but they also failed to appear at the hearing.*
- 14. The reasons for non- appearance at the hearing as made out under paragraphs 5 and 9 of the supporting Affidavit of Marie- May Esparon are inexcusable and solely due to omissions and latches on the part of Applicant and its counsel. In the same way as omissions of an applicant and latches on the part of counsel cannot amount to good grounds for leave to appeal out of time, the same cannot amount to good grounds for a stay of execution of a judgment not based on an appeal.*
- 15. Based on the above submissions, the Applicant's application is an abuse of the court's process and is frivolous and spurious. It has no legal basis, it serves to harass the Respondent and prevent the execution of the ET Judgment and cause the Respondent greater prejudice.*

- [7] Learned counsel for the Respondent submitted that the application should be dismissed with costs to the Respondent.
- [8] This Court has to consider and determine 2 issues raised by the current application. Firstly, whether this Court is properly seized of the case and is this Court the proper forum to consider this application for stay of execution. Secondly, if the answer to above is affirmative, whether considering the circumstances of this case and the legal principles to be considered a stay of execution should be granted.
- [9] The Seychelles Code of Civil Procedure provides little guidance on the jurisdiction of courts in respect of determining an application for execution of judgment. The general principle is that a Court that delivers a judgment may be called upon to stay the execution of the judgment pending appeal, or possibly pending application to set aside the judgment. The other alternative is for the application to stay a judgment pending appeal be made to the appellate court.
- [10] In this case there is no appeal before this Court or it seems before any other court. The Applicant has filed before the Employment Tribunal an application for setting aside the judgment of the Employment Tribunal. It is true that strictly speaking the Employment Tribunal has not been vested with jurisdiction under its Act to deal with execution of its judgment. Hence execution of its judgment is made by application to the Registrar of the Supreme Court. The Appellant seems to take the view that in view that it is the Registrar of the Supreme Court who deals with execution of judgment, then any application for stay must be made to the Supreme Court.
- [11] Learned counsel for the Respondent does not entirely reject this view but maintains that such application must be made where the Applicant has filed an appeal and within the prescribed time. Hence learned counsel for the Respondent argues that without this Supreme Court having been seized on appeal, this application is misconceived. In respect of stay of execution pending appeal, learned counsel for the Respondent is correct. However, there is no appeal in this case. Hence, as rightly concluded by learned counsel for the Respondent, the merits of the application as laid down in *Pool v William Civil*

Side 244/1993 and Chang-Tave v Chang-Tave [2003]SLR 74 (Civil Side 153/2002 for stay of execution pending appeal do not fall to be determined by this application.

- [12] The outstanding issue now is whether the Employment Tribunal has jurisdiction to stay its judgment for the reasons stated in the affidavit of the Applicant. Learned counsel for the Applicant has not considered this issue, that is jurisdiction as much as has been elaborated on by learned counsel for the Respondent. The argument of the Respondent is two-fold. Firstly, that the Employment Act does not give the Employment Tribunal jurisdiction or power to set aside its own judgment, hence the application being relied upon by the Applicant as basis for a stay of execution has zero prospect of success. Secondly, the Supreme Court cannot entertain an application for stay of execution unless an appeal has been filed. Since no appeal has been filed, this application for stay is ill-founded and must fail.
- [13] As argued by learned counsel for the Respondent, rule 22 of the Magistrates' Court (Civil Procedures) Rules provides for a party against whom an ex-parte judgment has been given to apply to the court to set aside the judgment within one month after the date of the judgment. The Employment Act does not have a similar provision. Taking the Respondent's submission at face value, the Respondent's argument may have merit which need to be considered by the Employment Tribunal hence this Court is mindful not to make a determination of this specific point ahead of the Employment Tribunal which has been seized with the application to set aside its judgment.
- [14] Having analysed the very grounds for this application, I find that the reason relied upon by the Applicant to stay the execution of the judgment of the Employment Tribunal does not meet or even raise the criteria required for a stay of execution to be ordered by this Court. Secondly, since no appeal has been filed, the criteria for stay of execution pending appeal do not fall to be considered. This Application is hence not sufficiently grounded and is dismissed accordingly.
- [15] I award costs to the Respondent.

Signed, dated and delivered at Ile du Port on 06 April 2022

Dodin J

Judge of the Supreme Court