

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL REVISION NO. 57 OF 2002

FAHARI BOTTLERS LIMITED APPLICANT

VERSUS

ABBILLAH MIKIDADI RESPONDENT

R U L I N G

MASOATI, J.

These revisional proceedings ^{were} / commenced by this Court suo motu following complaints filed by Hon. J.S. Warioba, the provisional liquidator of M/S FAHARI BOTTLERS LIMITED. The court invited the Applicant (Complainant) and the Respondent to address the Court on the matter.

The facts are fairly simple. The Respondent was employed by Fahari Bottlers Limited up to 6th August, 1996 when he was terminated. He filed an employment cause No. 283 of 1996 to claim for back wages, subsistence allowance and repatriation expenses. As the case was going on at Kivukoni Residents Magistrate's Court, Dar es salaam, the Defendant Company was placed under liquidation. Pursuant to the order of the High Court in Miscellaneous Civil Causes No. 146 - 158 of 1998 Mr. J.S. Warioba, was appointed provisional liquidator of the company effective from 20th September, 1999.

There is evidence on record that in the course of the winding up there was a scheme/deed of arrangement whereby unsecured creditors, including the Respondent ^{were} paid 17% of the verified claims. There is a record that the Respondent's verified claim was Shs. 16,948,000/= out of which he was paid Shs. 2,881,160/=. The Respondent was however not satisfied with the payment received, he went on to demand a total of 54,163,200/= by way of subsistence allowance. Towards ^{and} this end the Respondent went on / obtained a decree on 20th July, 2001. After obtaining the decree the Respondent went on and filed an application for execution. Actually the decree requires the liquidator to pay the plaintiff the said sum. It is this decree which prompted the liquidator to present these complaints, hence these proceedings.

The Applicant was represented by Mr. Nyange, while the Respondent stood unaided.

Mr. Nyange attacked the decree on several fronts. Firstly, he said the liquidator was not joined as a party to the suit as from the date of his appointment in 1999. Secondly, Under S. 176 of the Companies Ordinance, the proceedings in the lower court could not have been continued without leave of the High Court which has jurisdiction in winding up proceedings. Third, the Respondent fully partook in the creditors meeting and eventual filing of the deed of arrangement at the High Court where it was agreed that all unsecured creditors be paid only 17% of their claims. In response, the Respondent submitted that as far as he was concerned the payment he received represented only part of his claims, that he was still entitled to the balance of his other claims of 54,163,200/=. That the Applicant/ liquidator was served with the summons but elected not to appear in court; So the court was entitled to proceed ex parte and grant the decree. He therefore asked the court to dismiss the application for revision, and ratify what the lower court did and order that execution proceed so that justice can be done.

It is not in dispute that FAHARI BOTTLERS LIMITED was placed under liquidation under the Companies Ordinance Cap 212. There is also no doubt that Mr. J.S. Varioba was appointed the provisional liquidator of the company in September, 1996.

It is also indisputable that by that time Employment cause No. 283/96 was pending in the Kivukoni Resident Magistrate's Court, and that the court proceeded to hear the case ex parte and issued its decree on 20/07/2001.

Section 176 of the Companies Ordinance Cap 212 reads:-

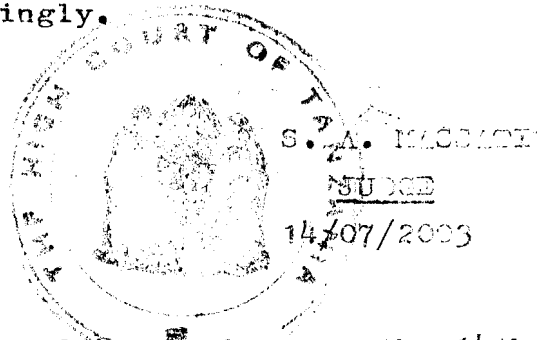
"When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose".

This section, it has been held, has the effect of automatically staying all pending proceedings. AB PALMER'S COMPANY LAW 21st ed. Comments at P. 763.

" On a winding up order being made or a provisional liquidator being appointed proceedings are automatically stayed and can not be proceeded without leave of the court".

It follows from the above postulation that all the proceedings in the employment cause after the appointment of the provisional liquidator on 20/09/1999, were made without the leave of the High Court which made the winding up order, and therefore made without jurisdiction. This means all the proceedings from 20/09/1999 up to and including the judgment, decree and execution proceedings were a nullity. They are accordingly revised and aside. The application for revision is therefore allowed. And there will be no order as costs.

Order accordingly.



Ruling delivered in chambers on the 14th day of July, 2003 in the presence of the Applicant and Mr. Nyange for the Respondent.

S. A. MASSATI
JUDGE
14/07/2003