

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

MISC. REV. NO 1 OF 2014

1. **GEORGE MAPUNDA** **1ST DECREE HOLDER**
2. **WEMA ABDALLA** **2ND DECREE HOLDER**

VERSUS

DAWASCO **DECREE DEBTOR**

(Originating from; Trade Enquiry No. 97/2007, Misc. Appl. No. 157/2012 and Misc. Appl. No. 320/2013)

09/07/2014

R.M. RWEYEMAMU J.;

ORDER IN REVISION

In course of my administrative duties, I received a written Complaint from the above named Decree Holders. That complaint drew my attention to one of the four issues, which have persistently plagued the Labour Court (LC) almost since its inception, as I shall soon demonstrate. These questions are:-

1. Do LC Registrars' powers to execute decrees extend, to adjudicating disputes relating to interpretation of decree; and, to hearing applications incidental to enforcement/execution of decree, for example objection proceedings.
2. The next question, although not arising directly involved in this matter is; do Registrars have jurisdiction to do any of the above, where the decree to be enforced emanates from the Commission for Mediation and Arbitration (CMA) award.

3. Third, if the answer to any or all of the above is in the negative but the Registrar has taken such action; what remedy is available to an aggrieved party? Does the LC have powers to take remedial action? If so, which one.
4. Last, does a Registrar of the LC have powers to review a decision made by another Registrar?

Due to importance of resolving the stated issues for future labour practice; and consequence of this Order to the parties involved in the dispute at hand, I invited each party to address me in writing on the issues. They were given until 8/7/2014 to file their opinions but they did not comply. This order is prepared without benefit of their opinions.

For ease of appreciation of importance of the involved issues in LC practice, I find it necessary to preface this Order with the following back ground information. I begin with the immediate background – source of the Complaint:-

- a. In a dispute registered as Trade Enquiry No. 92 of 2007, the defunct Industrial Court of Tanzania (ICT) **issued a decree** against the Judgment debtor (JD), in favour of the Decree Holders (DHs).
- b. The DHs made an application for enforcement of that Decree in this Court. The amount of claim lodged by the DHs was Tshs 137,340,080/=. The JD did not agree that the DHs were entitled to the amount lodged for execution.
- c. On the date set for hearing of that application, the Registrar heard oral submissions from each side regarding; the amount due on different items claimed, like on Repatriation, Notice, Salary arrears, Golden Handshake under a Voluntary Agreement etc. In a ruling dated 23/10/2012, the Registrar decided that;

“...in the final analysis **the decree holders are found to be entitled to the following** ...Grand Total 49,479,000/=. The decree debtor is therefore ordered to pay Tshs 49,479,000/= being a total sum in favour of both decree holders...” (Emphasis mine)

- d. Aggrieved by the above order, the JD filed an **application for review** of that decision. That application was heard by the Deputy Registrar (DR) who issued a different Order in a ruling delivered on 16/8/2013.
- e. In that ruling, the DR decided among others that, (I risk making this Order unnecessarily long but find it imperative to quote a large part of the ruling, so as to make obvious the ground of complaint) and I quote;-

“...the applicant, after being aggrieved by the decision of the Registrar, is praying for its review...Regarding to the salary, I am of the opinion that **the respondent are not entitled to the amount...iv...the entire ruling of the Registrar in the application for execution arising in the Trade Enquiry No. 92/2007 is hereby quashed** for the reasons earlier discussed. **The Respondents are entitled to unpaid leave if any.** It is so ordered.”(Emphasis mine)

- f. The above decision by the DR aggrieved the DHs whose Advocate made the Complaint to the Judge In charge stating, among others that;

“... **we are not sure about the procedure in the High Court Labour Division** but under normal circumstances the **DR’s powers are limited** under rule 28 of... (GN DN 106/2007)”; and that, “...**she cannot hear afresh the application and substitute her decision to that of the Registrar** as she did. My Lord on the above reasons, may you be pleased to place the said file before a Judge of the High Court for necessary proceedings” (Emphasis mine)

The Complaint above is just one incidents of the issues arising in the LC, in the area of execution of decrees. The law governing execution of decrees, (as I now understand it), is that the Registrar of the LC, like any other Registrar of the High Court, has power to enforce/execute Decrees and Orders of the LC. The Registrar’s powers in performance of such functions, are specified under **Orders XXI** and **Order XLIII (1) (f) to (k)** of the CPC (CAP 33 R.E 2002), read together with Rule 48 (3) of the Labour Court Rules (the Rules), GN 106/2007.

Before proceeding, I should point out that legal **powers of the LC Registrars extend beyond those indicated above**. Their powers include enforcement/execution of decisions (which term mean "...a judgment, award, decree, ruling, settlement agreement or Order) made by;-

- ✓ the Court,
- ✓ the Labour Commissioner,
- ✓ the Commission(CMA) or:
- ✓ Any other bodies, authorized to have its decision enforced by the Court. (Sections 87(4) and 89(2) of the Employment and Labour Relations Act, 7/2004, Section 54 of the Labour Institutions Act, 7/2004 read together with Rules 48 (4) of the Rules).

The practice in the LC however, has been slightly different. This fact is partly demonstrated by the underscored parts of the ruling/decisions of the Registrars quoted above and the examples I continue to give below. The powers of the Registrars in practice, have gone beyond those specified under the CPC. They include the following;-

- ✓ Adjudicating disputes involving parties' disagreement of the decretal amount;
- ✓ hearing of applications for objection;
- ✓ Hearing applications for review of a Registrar's decision made in the execution process including decisions on the above applications;
- ✓ Hearing application for review of another Registrar's decision on the above, and;
- ✓ Other incidental applications.

The practices have created an impasse, regarding what remedy is available to a party aggrieved by the Registrar's decision in exercise of such powers; and two, procedures for accessing such remedy. I will give few examples to illustrate the point.

1. In an order dated **6/3/2009**, the LC quashed a DR's decision made in exercise of execution powers, in the case of **Capitol Decoration & Building Works versus Edward Rugayaza and 45 Others**, *Revision No. 239 of 2008 C/F Revision No 105/2008*. The action taken by the LC was prompted by a complaint raised by one of the aggrieved

3. In *LC Misc Application No 47 of 2010, Globelec Tanzania Services LTD Versus Evarista Sessa*, (unreported) parties were aggrieved by a Registrar's Order, of a kind referred to. They filed an application for revision of that order, which was moved into Court under Rule 28 (1) of the Labour Court Rules. The application was struck out after upholding a Preliminary Objection that; the application was incompetent on ground of improper citation of enabling provisions of the law. It was clear however, based on the applicants' arguments that there was a dilemma regarding provisions governing the situation. That decision was made on **1/3/2011**.

4. In yet another recent decision, *James Mgaya & 3 Others Versus TTCL (T) LTD, Misc Application No. 15 of 2013*, (unreported) the applicants were aggrieved by the Order made by the Registrar in the process of execution which seemed to be contrary to a Court decision. They filed an application for its review, moved into Court under Section 94 of the ELRA and rules 24 and 26 of the Labour Court Rules, seeking the following orders:

*"1this Honourable Court may be pleased to call for and review the decision of the Registrar (...) in execution case No. 7/2011 dated 27/2/2013 on ground that **the said decision contravened the import embodied in the main ruling (Revision 30/2011) hence it was illegally and erroneously arrived at and in disregard of the provision of the law...**" (Emphasis mine).*

In its decision issued by the Court on, **19/2/2014**- the Court decided that **"...an application for review of the Registrar's decision has to be made to, and decided by, the Registrar who made the decision sought to be reviewed"**.

All the four cases referred to above, and now this complaint, indicate aggrieved parties' efforts to seek remedy. As every practitioner in this Court is well aware, the given examples are just but a few, of the complaints raised against decisions of LC Registrars, issued in exercise of execution powers. I am also aware that, unfortunately, the LC has not

had a homogeneous manner of handling applications arising from the stated procedure. And I am not aware if the issue has been directly considered by the Court of Appeal.

A recent decision of the Court of Appeal, one of the Court clarified the proper position in one of the issues, which had hitherto, remained *moot*. It is the case **BP Tanzania Limited versus Riakdit Barnabas**, *Civil Appeal No. 62 of 2012 (unreported)*. In that appeal emanating from this Court's decision in Labour Dispute 10/2010 (incidentally, a decision made by myself) the Court clarified the issue of Registrar's powers in respect of ascertaining an amount due on decree. One of the grounds in that appeal, a ground conceded by the respondent was that:-

- ✓ "The trial judge failed to calculate the quantum of the said retrenchment package. Instead, she left it to the Registrar of the High Court, Labour Division...the said Registrar has no jurisdiction to determine the said quantum...that is the duty of the trial Court"
- ✓ In its decision, the Court held *inter alia* that; "...the second issue is **whether the respondent's retrenchment package was correctly calculated**. ...The judgment of the trial court "abdicates" this judicial duty. The same is delegated to the Registrar of the trial court. We have stated earlier that **the said Registrar has no jurisdiction over such a substantive responsibility of the trial judge**" (Emphasis mine).

From the above decision, it is obvious to me that the problem the Court has grappled with over the years, regarding unavailability of remedy against some decisions made by LC Registrars, arose because they were exercising powers not anticipated by law. For example, it is clear from the decision that: It is not sufficient for the LC to state the principle to be used in arriving at a quantum to be paid under a decree. The duty to decide the quantum payable under a decree is that of the trial court (and by extension of reasoning, the CMA). Where parties disagree on the quantum payable, the LC Registrars have no jurisdiction to decide the issue.

After considering all the above including existing practice, I make the following observations and orders.

1. While it may be desirable, for purpose of easing the load of the LC that its Registrars be vested with jurisdiction to interpret/calculate quantum payable under a decree, where the substantive principle to be followed has been specified, e.g., to calculation of the amount payable in lieu of reinstatement of an employee, where the employer exercises the legal right not to reinstate); that is not the position under the current law. The law now is that, **LC Registrars have no jurisdiction to determine or calculate the amount payable under a decree. Their duty is to enforce the decree as it is.**
2. The above principle applies in respect of decrees emanating from CMA awards. Where the amount under a decree is uncertain, the CMA decree can be revised for failure to exercise jurisdiction because a CMA Order, which is enforceable in this Court as a decree, is supposed to contain;"the order(the precise outcome of the decision). See Rule 27 (3) (f) of the Labour Institutions (mediation and Arbitration) Guidelines Rules, GN 67/2007.
3. The LC has inherent powers to **revise** not review, decisions and orders made by the Registrar in the course of execution of decrees, if moved properly by the parties, and even *suo mottu*, where the Court "... considers it expedient in the circumstances, to achieve the objects of the Act, and the good ends of justice" . Rule 55 (1) and (2) of the Labour Court Rules.
4. The decision of the DR made on 16/08/2013 in an Application for Review of the Registrars decision in **George Mapunda and Another Vs. DAWASCO** was improperly arrived at because an application for review is supposed to be heard by a person who made the decision sought to be reviewed. This Court has inherent powers to remedy the situation. Using such powers, I quash and set aside that decision.

It is so ordered.

R.M.Rweyemamu
Judge
8/7/2014

