

**THE UNITED REPUBLIC OF TANZANIA**

**(THE JUDICIARY)**

**(HIGH COURT LABOUR DIVISION)**

**MISC. LABOUR APPLICATION NO. 4 OF 2018**

*(From the original Decision No. (MA/BUK/64/2015))*

**WORD VISION TANZANIA-----APPLICANT**

**VERSUS**

**FELICIAN RUTWAZA-----RESPONDENT**

**RULING**

**14/9/2018 & 14/9/2018**

**MLACHA, J.**

The applicant **WORLD VISION TANZANIA** is a judgment debtor in Labour revision No. 1 of 2018 which revised an earlier award of the Commission for Mediation and Arbitration (CMA) Bukoba and awarded Tshs. 7,294,794/= to the respondent Felician Rutwaza. Feeling obliged to comply with the decree of this court, the applicant effected payment of the decretal sum to the respondent's Bank Account and filled an application to this court under order XXI Rule 2 (2) and Section 95 of the Civil Procedure Code Act, Cap. 33 R.E. 2002 and Rules 24 (3) (a), (b) (c), and (d) of the Labour Court rules GN No. 106/2007 to request it to

summon the respondent/decreed holder to show cause as to why the payments should not be made as certified.

Before the hearing of the application the court wanted to know from the counsel for the applicant, Mr. Robert Reuben, whether they knew that there was an appeal against the decision in the Court of Appeal. He replied that they were fully aware of the appeal but needed to comply with the decree despite the appeal. It was not known to me immediately why there was on move to pay while there was no any threat to execute the decree.

Submitting before the court, Mr. Robert Reuben told the court that their earlier plan was to effect the payment through the Account of this court but it could not be successful. The Account kept on rejecting the payments for unknown reasons. He went on to say that they came to this court for advice and met the deputy registrar. They received an advice from the deputy registrar (orally) that they could deposit the money in the respondent's Bank Account, an advice which they took and complied accordingly. He proceeded to say that this move has no intension

to prejudice the pending appeal. It is rather a compliance to the court decree. He requested the court to certify that the decretal sum has been paid to the respondent.

The respondent confirmed receipt of the amount of money but hastened to say that there was no any agreement between them to do so. He confirmed that he has dodged an appeal to the Court of Appeal against the judgment of this court. And added that this payment should be related to his appeal.

I have considered the matter carefully. I have two observations to make. One, I am not happy with the procedure used to effect the money to the respondent because it contradicted the law. Two, I have the opinion that there was no need to rush to pay the amount while there was a pending appeal. It is if the applicant is aware that the decision of this court cannot be changed by the appeal. I think so long as there was a pending appeal, wisdom could lead them to wait for the outcome of the appeal.

But suppose there was no appeal, what then could be the procedure of payment? The relevant law is Order XXI rule 1 of the Civil Procedure code. It reads thus;

*"1. (1) All money payable under a decree shall be paid as follows-*

- (a) Into the court whose duty it is to execute the decree;*
- (b) Out of court to decree holder; or*
- (c) Otherwise as the court which made the decree directs.*

*(2) Where any payment is made under paragraph (a) of subrule (1), notice of such payment shall be given to the decree holder."*

That means that, a judgment debtor can come to court and say that here is the money I want pay. Usually this is done by writing a letter to the deputy registrar who could in turn provide the court bank account details. He will do this through a letter, after making an endorsement in the record. The letters will be copied to the decree holder as well to notify him of what is going on in court. Once there is a proof that the money has been deposited

as directed, the court will summon the decree holder to appear and collect the money. He will usually provide his account details, if he has any, and the money will be transferred to him accordingly. The court will then make the necessary endorsement on record and close the matter.

In the second category, the parties may negotiate themselves out of court and make the payments provided that they appear later to the court and register what they have done. A judgment debtor is allowed to effect payment to the decree holder out of court and give a notice to the court. Payment out of court is allowed but is not a unilateral act. It is an act which must be done on the mutual understanding of the parties. It is a thing which usually came after some discussions between them. It is done where there is a friendly atmosphere. An appeal is an indication that one of the parties is aggrieved by the decision. It is evidence of absence of a friendly atmosphere. In other words, it is unlikely to have a payment out of court where there is a pending appeal.

In this case, the applicant says that their initial plan was to pay to the court but there is no evidence showing that they moved the court to receive the money. They said further that it is the court which advised them to pay to the respondent straight but this is not backed by evidence. It follows that the money was paid contrary to the procedure. This has brought me to a dilemma. Should I order refund? The wisdom of court does not take me to that direction for the respondent must have used the money by now. Ordering refund may amount to an embarrassment.

I think what this court can do is just to make an endorsement that the decretal sum has been paid to the respondent by the applicant on a move initiated by them and leave the matter to the Court of Appeal. I do so. I will further remind the applicant to follow the procedure I have outlined above in future. That is all.



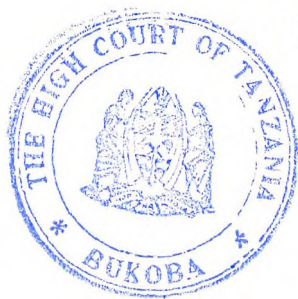
L.M. Mlacha

Judge

14/9/2018

**Court:** Ruling delivered in the presence of Mr. Co Optat Henry represented Applicant and absent of the Respondent.

Right of Appeal Explained.



  
L.M. Mlacha

Judge

14/9/2018