

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DEVISION

AT MUSOMA

LABOUR EXECUTION NO. 11 OF 2020

(Arising from the Award of the Commission Decision for Mediation and Arbitration at Musoma in Labour Dispute No. CMA/MUS/248/2017)

RAPHAEL JUMA KASERA JUDGEMENT HOLDER

VERSUS

KATIBU DAYOSISI YA MARA..... JUDGEMENT DEBTOR

RULING

Date of Last Order: 21.05.2020

Date of Ruling: 22.5.2020

KISANYA, J.:

The judgement holder has applied for execution of award by sending the judgement debtor to prison as a civil prisoner. This application is based on award of Tsh. 3,832,385 granted in the favour of the judgement holder by the Commission for Mediation and Arbitration for Mara at Musoma (CMA) in Labour Dispute No. CMA/MUS/248/2017.

On 29th April, 2020, this Court overruled the objection raised by Counsel Wambura Kisika, learned advocate for the judgement debtor. The said objection was to the effect that the award is not executable for being issued against the wrong party. Having considered that this mode of execution of award or decree involves restraining of personal freedom of Katibu wa Dayosisi ya Mara/ Judgement holder, and pursuant to O. XX1, r.35 (1) of the Civil Procedure

Code, Cap. 33, R.E. 2019 (CPC), the Court ordered the decree debtor to appear personally and show cause as to why he should not be committed to prison.

Mr. Maximillian Byamusema, Katibu wa Dayosisi ya Mara appeared on 6th May, 2020. He requested for time to consult the relevant authority and see the best way of paying the judgement holder. The leave for consultation was granted as requested.

However, when the matter was called on for the decree debtor to update the Court and show cause as to why he should not be committed to prison, Mr. Wambura Kisika, informed the Court that after the consultation, the Judgement debtor had opted to apply for extension of time to file an application for restoration of Labour Revision No. 5 of 2019 which was dismissed for want prosecution. He also submitted that they had applied for stay of execution of the award pending decision of the application for extension of time to file restoration of Labour Revision No. 5 of 2019. Therefore, counsel Kisika urged me to stay this application. His request was made under section 91(3) of the Labour and Employment Relation Act, 2004 (as amended) and rule 55(2) of the Labour Court Rules, 2007. The learned counsel argued that there is irregularity on the award issued by the CMA as the Katibu wa Dayosisi ya Mara was sued in his own capacity in lieu of the Registered Trustees of the Anglican Church of Tanzania who employed the judgement holder.

In reply, the judgement holder resisted the application. He asked me to dismiss the request by the judgement debtor on the ground that they ought to have filed the said applications in time.

The main issue is whether pendency of the application for extension of time to file an application for restoration of Labour Revision No. 5 of 2019 and

application for stay of execution is a good cause for this Court not to grant the application at hand.

Rule 49 of the Labour Court Rules, 2007 empowers this Court to enforce an award issued by CMA. In enforcing the award, the Court exercises the powers conferred to it under Order XXI of the CPC. This is provided for under rule 48(3) of the Labour Court Rules, 2007 which provides further that the Court can enforce the award notwithstanding that there is a right of appeal, revision, reference or review. The said provision reads:

“For avoidance of any doubt, every decision of the Court notwithstanding that it has not yet been published in Gazette or that any has a right of appeal or review or intends to file an action in any court on grounds referred in sub rule (1) or that any party has a right of appeal or revision or reference or intends to file an action in any court to challenge the same decision, shall be enforced by the Court itself exercising the powers conferred by the provision of O. XXI of the Civil Procedure Code Act, or in any other civil court of competent jurisdiction as if it was a decree of the Court.” [Emphasize supplied].

According to rule 48(4) of the Labour Court Rules, 2007, the word “decision” referred to in the above provision include the award made by the CMA. However, although the right to appeal, revision or any action to challenge the decision to be enforced is not a bar to the enforcement of the award, the Court has a discretion of staying the enforcement of the award pending its decision. This is provided for under section 91(3) of the Labour and Employment Rules, 2007 which states:

“The Labour Court may stay the enforcement of the award pending its decision.”

In the present case, there is no application for revision which is pending before this Court. The judgement debtor states that they have filed an application for extension of time to file an application for restoration of Labour Revision No. 5 of 2019 which was dismissed by the Court for want prosecution; and application for stay of execution pending determination of the application for restoration of the revision proceedings. However, the Court was not availed with copies of the said applications for consideration.

Therefore, I am of the considered opinion that, the pendency of the application for extension of time to file an application for restoration of the revision proceedings and application for stay of execution (if any) cannot on its own functions or acts as a stay to the enforcement and execution of award. But the same alarms the Court to ensure that the execution is not conducted in a manner which interfere with or prejudice the pending proceedings. Otherwise, the judgement holder is entitled to initiate the execution proceedings.

The judgement holder in the case at hand decided to have the award executed by arrest and sending the judgement debtor to prison as a civil prisoner. I am persuaded by the decision of this Court in **Princes Shabaha Company Ltd vs NIC Bank Limited Tanzania Ltd**, Com. Case No 94 of 2015, HCT, Commercial Division at Dar es Salaam (unreported) when His Lordship Mruma, J, held that:

... Decree Holder (just like the Judgment debtor who has the right of appeal etc), has the right to commence the execution proceedings for instance to identify the properties of the Judgment Debtor which are liable for attachment and sale and probably the court broker who will carry out the order. In a case like this where the mode of execution chosen is by arrest and sending to prison of the Judgment Debtor's Director, it is just convenient that the person sought to be arrested is

identified and the order for his arrest is in place. In the event the intended appeal or application is decided in Appellant's favour, the order for arrest of the judgment debtor or any person liable for arrest will die a natural death. However, in the event the appeal or any other pending proceedings are unsuccessfully, then the order will be carried out unless he sooner pays the decretal sum. This procedure will assist the Decree Holder and the Court to avoid multiple applications for execution of a decree regard less the result of the intended appeal.

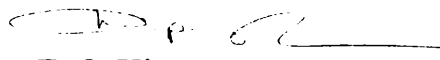
As stated herein the judgement debtor was called upon to show cause as to why he should not be sent to prison. I have opined that the ground raised on pendency of the application for extension of time to file an application for restoration of revision and application for stay of execution is not a good cause for not granting the application at hand. This is when it is considered that the right to revision or appeal or any action intended to challenge the award is not a bar to the Court in enforcing the award. Further, the applications pending in the Court, if any, were filed after the present application have been filed in Court and the judgement debtor called upon to show cause as to why he should not be sent to prison as a civil prisoner.

For the aforesaid reasons, the application for executing the award of the CMA by sending the judgement debtor (Katibu wa Dayosisi ya Mara) to prison is hereby granted unless the award of Tsh. 3,832,385 is paid to the judgement holder.

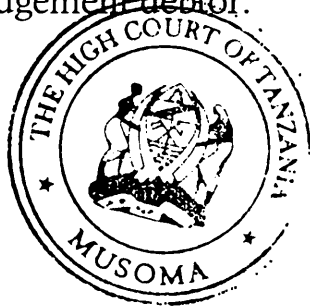
However, for the interest of justice, if the judgment debtor has, at the date of this ruling, filed an application for stay of execution, I order that this Order should be executed if the said application for stay of execution (if any) is not decided in favour of the judgement debtor. In such a case, the judgement holder will not be required to apply for execution of the award. He will come to be issued with the


administrative logistics on how to enforce or carry out the Order of sending Katibu wa Dayosisi ya Mara to prison as a civil prisoner. On the other hand, in the event the Court grant or decide the application for stay of execution in the favour of the judgement debtor, this Order of sending Katibu wa Dayosisi ya Mara (Judgement Debtor) to prison as a civil prisoner will depend on the order to be issued by the Court in that application. It is so ordered

Dated at MUSOMA this 22th day of May, 2020.


E. S. Kisanya
JUDGE
22/5/2020

Court: Ruling delivered this 22nd day of May, 2020 in the presence of Raphael Juma Kasera (judgement holder) and Mr. Wambura Kisika, learned advocate for the judgement debtor.




E. S. Kisanya
JUDGE
22/5/2020