

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. LABOUR APPLICATION NO. 24 OF 2019

(Arising from the CMA Labour Dispute No. CMA/MTW/LD/110/18)

DHAMIRA YUSUPH NAMKAVALA.....APPLICANT

VERSUS

MOHAMED HAMIS NAMKAVALA.....1ST RESPONDENT

FATUMA SALUM ABDALLAH & 33 OTHERS.....2ND RESPONDENT

YONO AUCTION MART & CO. LTD.....3RD RESPONDENT

RULING

26 May, & 9 June, 2020

DYANSOBERA, J.:

The applicant herein has filed this application praying for the following orders:-

EX PARTE

1. That this Honourable Court may be pleased to grant an interim ex parte stop order for stay of execution against the

all respondents, their broker and seller restraining them from intention the execute the transaction of selling the applicant land house situated at Mningano in Mtwara Mikindani Municipality pending the hearing of the Main Labour Application No. 20 of 2019 and chamber summons inter parte.

INTER PARTE

2. That this Honourable Court may be pleased to grant a temporary injunction (sic)/stop order against the 1st and 2nd respondents restraining them from effectiveness of their intention not taking and sale transaction of selling the land plot of applicant situated at Majengo in Mtwara Mikindani Municipality pending the hearing and determination of the main Misc. Labour Application
3. Costs be provided for.

The application has been made under rule 24 (11), (a) (b) of the Labour Court Rules GN. No. 106 of 2007, sections 68 (e) and 95, Order XXI rule 24 (1), Order XXXIX rules 1 and 2 of the Civil Procedure Code, and any other provisions of the laws and is supported by the affidavit of DHAMIRA YUSUPH NAMKAVALA, the applicant.

The application has been objected to by the 2nd respondent and 33 others through their joint notice of opposition. In their notice of opposition, the respondents have prayed this court to dismiss the application on the main ground that the application is overtaken by events as the sale order has been executed.

This court, on 21st April, 2020, directed the application to be heard by way of written submissions and set the time frame for the parties to submit and file their respective written submissions. The parties duly complied with the order of this court.

Essentially, the applicant, according to her written submission in chief dated 4th May, 2020 and filed on 5th May, 2020, is seeking, inter alia,

- i. "That this Honourable Court may be pleased to issue an order for stay of execution of decree in Labour Dispute No. CMA/MTW/LD/110/18 originated (sic) from the Commission of Mediation and Arbitration for Mtwara."*

The applicant has managed to elaborate on the basis of her application. According to her, it would seem that her brother, the 1st respondent entered into employment contract with the 2nd respondents.

After the 1st respondent failed to pay remuneration to his employees, the latter successfully filed a Labour Dispute before the Commissioner for Mediation and Arbitration at Mtwara against the former. Armed with the Award from the Commissioner for Mediation and Arbitration in Labour Dispute No. CMA/MTW/LD/110/18 had the house situated at Mningano attached and sold in execution of the said award. The applicant's complaint is that the house is the inheritance property and she is a joint beneficiary of the house with the 1st respondent. It is further averred by the applicant that she has filed Misc. Labour Application No. 20 of 2019 before this court against her brother, Mohamed Hamis Namkavala, the 2nd respondents (Fatuma Salum Abdallah and 33 others) and the 3rd respondent who is the Court broker one Yono Auction Mart & Co. Ltd. In this application she is praying for stay of execution of the Labour Dispute No. CMA/MTW/LD/110/18.

In response to the applicant's written submission in chief, Fatuma Salum Abdallah and 33 others are maintaining that this application has been overtaken by events as the execution has already been conducted and the sale has taken place. In support of their argument, the 2nd respondent(s) have attached letter on Labour Execution No. 10 of 2019 dated 6th December, 2019.

I have carefully considered the submissions for and in opposition of the application. I have also taken into account the applicant's affidavit and the counter affidavit filed by the 2nd respondents and the 1st respondent.

Two important facts are noteworthy. First, the application is incomplete in that the application is not accompanied with a copy of the Award sought to be stayed. The absence of the copy of the Award to be stayed is fatal to the whole application as the court cannot stay what it does not have. This legal position was elucidated by the Court of Appeal in (CAT) Civil Application No. 138 of 2000 between **Consolidated Holdings Corporation v. Rajani Industries Limited** (unreported), where a single judge of the Court stated –

“I am in no doubt that application for stay of execution of decree, which is filed without being accompanied by a copy of the decree sought to be stayed, would be incompetent. The Court cannot be expected to consider staying a decree it has not seen”.

Second, as rightly pointed out by the 2nd respondent and 33 others, this application has been overtaken by events in that the execution sought to be stayed has already been conducted and the house in question already sold. This is evidenced by the letter by the 3rd respondent, the 2nd respondents attached to their joint counter affidavit in support of the notice of opposition, paragraph 6 of the said affidavit. The letter is Ref. No. YONO/MHN/HLDMTW/2019/01 dated 6th

December, 2019 addressed to the Deputy Registrar, High Court of Tanzania, Mtwara on Labour Execution No. 10 of 2019 which runs as follows:

FATUMA SALUM & OTHERS 33.....DECREE HOLDER

VERSUS

MOHAMED HAMIS NAMKALAVA.....DECREE DEBTOR

YAH: RIPOTI YA UTEKELEZAJI WA MALIPO YA MNADA WA NYUMBA NO. 0114 ILIYOPO MMINGANO MTWARA MJINI.

Husika na kichwa cha habari hapo juu.

Rejea mnada uliofanyika tarehe 05/10/2019 wa kuuza nyumba Na. 0114 iliyopo Mmingano Mtwara mjini.

Mnunuzi/mshindi wa mnada ameweza kulipa kiasi cha pesa cha Tshs.4,300,000/= na kubakiza Tsh.2, 000,000/= ambayo atamaliza kabla ya tarehe 12/12/2019.

Tumeambatanisha na stakabadhi ya malipo.

Tunapenda kuwasilisha malipo haya mbele ya Mahakama yako tukufu.

Kwako nawasilisha

Wako katika kazi.

.....

AGREY S. KEVELA

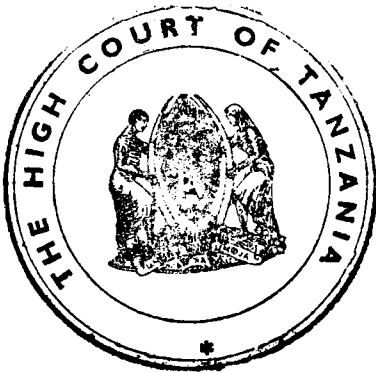
DALALI WA MAHAKAMA


YONO AUCTION MART & CO. LTD.

The above letter is self-explanatory and is to the effect that the house has already been sold and a substantial money paid (Tshs. 4,300,000/=) remaining Tshs. 2,000,000/= which was to be paid before 12th December, 2019.

In the circumstances, apart from the fact that the application for stay of execution is incomplete for lack of the order or decree or award to be stayed, the application has been overtaken by events as there is nothing to stay.

In the end result and for the foregoing reasons, the application, being devoid of merit is hereby dismissed without costs.





W. P. Dyansobera

JUDGE

9.6.2020

This ruling is delivered under my hand and the seal of this Court on this 9th day of June, 2020 in the presence of Ahamad Yusuph Namkavala representing the applicant and in the presence of the 2nd respondent but in the absence of the 1st and 3rd respondents.




W.P. Dyansobera

JUDGE