IN THE HIGH COURT OF TANZANIA

(LABOUR COURT DIVISION)

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

LABOUR REVISION NO.61 OF 2018

(Arising from decision of the High Court (labor execution case No.10/2018)

PANGEA MINERALS LTD.....APPLICANT

VERSUS

MUSSA MAYEYE.....RESPONDENT

RULING

8/5 & 4/8/2020

G.J.Mdemu,J.;

In this labour revision, the Applicant Pangea Minerals Ltd filed an application for revision in terms of the provisions of Rules 55, 28 and 24 of the Labour Court Rules, 2007 intending this court to revise the decision of the Deputy Registrar in Labour Execution No.10 of 2018 dated 24th of August 2018. The application is supported by the affidavit of one Steven Hauli, learned counsel for the Applicant company sworn on 24th of September, 2018.

Facts of the sought labour revision according to the affidavit are such that, the Respondent was a decree holder following award of the Commission for Mediation and Arbitration in labour dispute No. CMA/SHY/69/2011 in which, the Applicant was ordered to compensate the Respondent Tshs.44,965,859/= for unfair termination. Parties however settled out of court and registered a deed of settlement dated 11th of May 2016 to the effect that,

the Respondent be compensated Tshs. 25,799,640/= being full realization of the whole claim. He was accordingly paid.

Sometimes in the year 2018, in Labour Execution Case No.108 of 2018, the Respondent lodged another fresh application for execution claiming the difference on account that, he was forced to sign the settlement deed and also that, there was an error in calculation. This application was made before another Deputy Registrar who entertained it and ordered the decretal unpaid award of Tshs.6,700,620/= be paid to the Respondent. The Applicant got aggrieved by that execution order hence, the instant application for revision on the following grounds as coached in paragraph 10(i) (ii) of the affidavit as hereunder:

i. *Whether it was proper for Hon. Rujwahuka DR, to interfere an order pronounced by her fellow Registrar and proceed with recalculating the amount awarded to the Respondent by Gwae, DR*
ii. *Whether it was proper for the Respondent to institute another application for execution while the dispute between him and the Applicant ended by way of mediation.*

On 8th of May, 2020, this application was called for hearing. The Applicant company was represented by Mr. Kange, learned Advocate whereas the Respondent appeared in person. In support of the application, Mr. Kange first prayed the affidavit of Mr. Steven Hauli sworn in support of the application be adopted forming part of his submission.

Submitting in the first ground, Mr. Kange briefly stated that Rwujahuka (DR) had no jurisdiction to entertain the application for execution because

there was a decision of another DR (Gwae) who ordered the Respondent decree holder to be paid Tsh.44,965,859/= which later, as per the deed of settlement, the Respondent accepted Tshs.25,799,640/= being a realization of the whole claim. On this, and as the respondent does not dispute the paid sum, it was illegal for the Deputy Registrar to order another compensation. The learned counsel added.

It was his observation under the circumstances that, instead of filing a fresh application for execution before another Deputy Registrar, the Respondent was supposed to challenge the first application for execution. He added also that, as per the deed of settlement, especially in clause 4, the signing of the deed of settlement relinquishes all further claims in respect thereof. In principle, following execution after deed of settlement, there was no decree to be executed and it was wrong for the Deputy Registrar to correct the decision of another Deputy Registrar.

In reply, the Respondent submitted that, his affidavit be adopted so as to form part of his submission. He countered the allegation of the Applicant as was terminated after the added responsibilities in the post of Risk Management Planner which he did not have in the former post of Maintenance Planner. As the Applicant refuted reinstatement order of the CMA, order of Gwae, Deputy Registrar then came into effect such that, the Applicant was to pay the Respondent for medical checkup, salaries and subsistence allowances to the date of full payment. The main complaint of the Respondent is that the Applicant did not implement the order to the fullest. In his view, the Applicant was to pay the total claim of Tshs.44.965,859/= as ordered by Gwae (DR)

With regard to the settlement out of court, the Respondent submitted that, he effected changes to the deed of settlement on what he thought was the

correct claim only to be given the earlier deed of settlement which he signed on two reasons: **One,** that he was threatened to sign because the company promised to blacklist him. **Two**, that even the 25M he received will only be paid to him upon signing of the deed of settlement. He concluded in this that, had it being not the intimidation, he would not have signed that deed of settlement.

His further complaint regarding payment was that, the subsistence allowances was not supposed to be subjected to tax deductions and also NSSF contributions. He thus thought, as he waited for sometimes at Kahama after his medical doctor concluded that, he is suffering from back pain and blood pressure, the Applicant has to pay him, the reason why he packaged all the claim in the application subject to the instant revision. He summed up that the claim of Tsh. 7,754,000/= is included in the order issued by Gwae (DR) thus what Rwujwahuka(DR) did was to correct so as to come to the original sum awarded. He thought, the application has no merit and it be dismissed. Mr. Kange had nothing useful in rejoinder save for reiterating what he submitted in chief.

From what parties submitted, it is not disputed that the decretal sum of Tshs. 44,965,859/= was decreed to the Respondent by Gwae (DR). It is also on record that, as per the deed of settlement signed by both parties to this application, it was agreed that, the Respondent be paid Tshs. 25,799,640/= which he dully received. The allegation of the Respondent leading to the filing of fresh application is coached on the fact that the Respondent was induced to sign the deed of settlement on two grounds, **one** that, he will be blacklisted and **two** that, even the agreed sum in the said deed was to be paid upon

signing of the deed of settlement. Is this a correct understanding of things as they are? This, for all intent and purpose, must be borne by the record.

I have assessed the counter affidavit of the Respondent and could not meet a paragraph or even a phrase deposing on intimidation. Who intimidated the Respondent, under what circumstances, and is it for the purpose he alleged or was for a different purpose all together. Had the Respondent found substance in what he submitted in court, he would have deposed the same in his affidavit in reply. I have taken note of paragraph 7 of the affidavit in reply regarding adducing evidence at the hearing of this application. It was deposed that:

> *"The Respondent avers further that the issues arise from the facts that constitute this revision are baseless and the Respondent will have to proof over the said issues and the Respondent will adduce more evidence and defence during the hearing of this application."*

From the above deposition, it be known that, all through in the notice of application, chamber summons, affidavit, notice of opposition and an affidavit in reply, there is no even single paragraph, clause, phrase or even the word intimidation pleaded. It is to say, there is nothing to prove regarding allegation that the Respondent was forced to sign the deed of settlement. In that understanding, my view is that, the Respondent will not have any evidence to adduce regarding the manner he got intimidated in signing the deed or the promise that even the sum he received was also to follow the signing of the deed of settlement. What therefore he submitted during hearing of the application is submission at the bar which has never been evidence. This was stated in the case of **The Registered Trustees of the Archdiocese**

of Dar es Salaam V. The Chairman Bunju Village Government and 11 others, Civil Appeal No. 147 of 2006,at page 7 in the following version:

> *"With respect however,* ***submissions are not evidence****. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already tendered. They are expected to contain arguments on the applicable law. They are not intended to be a substitute evidence." (emphasis mine)*

My take is therefore that the Respondent signed the deed of settlement without any inducement, intimidation or promise and therefore as per clauses 1 and 4 of the deed of settlement, the Respondent was not supposed to lodge another claim. The two clauses read:

1. *That the decree debtor shall pay the decree holder the repatriation costs in form of the accruing subsistence allowance as at May 2016 to the tune of Tshs. 25,799,640, Tax inclusive in order to end decree holder's repatriation claims once and for all.*

4 *That upon signing of this deed of settlement, the decree holder shall have no any further claims against the decree debtor in respect of repatriation costs and*

he will be estopped from such further claims unless there are justifiable claims to that effect supported by a lawful court order.

It is obvious from the two paragraphs that, the paid sums in circumstances when the Respondent does not dispute, have settled the whole claim once and for all and has further relinquishes any claim by the Respondent against the Applicant.

Last, is the observation of the Applicant's counsel, which I entirely agree that, as the Respondent was uncomfortable with the decretal sum decreed by the first Deputy Registrar, instead of filing a fresh application, thus inviting another Deputy Registrar to review or correct the order of the other, he would have asked this court to revise the decision of an application for execution of the former Deputy Registrar. What therefore was done by the second Deputy Registrar was not only supported by any justification, but also illegal.

Having said so, the instant application is hereby allowed. Each part to bear own costs.

Order accordingly.

Gerson J. Mdemu
JUDGE
4/8/2020

DATED at **SHINYANGA** this 4th day of August ,2020

Gerson J. Mdemu

JUDGE