

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**REVISION NO. 23 OF 2020**

*(Arising from the Execution No 9 of 2020 originating from an exparte judgement of the CMA in Labour dispute no CMA/222/2017)*

**FINCA MICROFINANCE BANK.....APPLICANT**

**VERSUS**

**VEDASTUS CHUNDU.....RESPONDENT**

**RULING**

*Date of the last Order: 30<sup>th</sup> June, 2020*

*Date of the Ruling: -21<sup>st</sup> August, 2020*

**MKWIZU,J.:**

Under Rules 24 (1), Rule 24 (2) (a), (b), (c ), (d) (e), 24(3),(a) (b), (c ), (d) ; 24 (11) (a) and 28 (1) (c ), (d) ( e) and rule 55 (1) and (2) of the Labour Court Rules, GN. No. 106 of 2007 the applicant made this application for revision challenging the execution proceedings and order by the deputy Registrar in execution No. 9 of 2020 originating from an exparte judgement of the CMA in Labour Dispute No. CMA/222/2017.

The brief facts of the dispute as discerned from the proceedings are that, respondent was once employed by the applicant and later terminated on 17<sup>th</sup> October, 2017. Aggrieved, respondent filed labour dispute No CMA/222/2017 at the CMA respondent appeared but unfortunately and without excuse applicant defaulted appearance on the date the matter was scheduled for hearing. The matter, on that ground was heard and determined ex parte. Applicant filed an application to set aside ex parte judgement, this application was filed at the CMA and stay of execution which was lodged at the High Court Registry. On his part, respondent applied for execution of the CMA's award at the High Court in Execution No. 9 of 2020.

When the matter appeared for the first time before the Deputy Registrar in an application for execution, respondent, (decree holder) appeared in person while the judgement debtor had the services of Mr. Chubwa Muheza who held the brief of Mr. Siraji Musa Kwikima for the respondent. Mr. Muheza informed the Deputy Registrar that respondent's counsel is appearing before the High Court in Dar es salaam, and that he has already filed an application for stay of execution which is yet to be determined. Without more, the

learned Deputy Registrar order the execution to proceed. Here is her order for convenience and refence:

*"As the said judgement debtor or decree debtor is duly served and there is no sufficient reasons for them to appear and defend that execution on why not to proceed, let this court grant an application for execution as prayed, and I order the following:*

- 1. The said motor vehicle (HIACE) with registration No. T 245 CBB in the name of Finca Microfinance bank to be attached and sale as the decree debtor prayed for, Or Garneshee order nisi with Account No.22306600143 at NMB Bank PLC in the name of Finca micrifinace bank to be issued*
- 2. The appointed court broker one Abajaja to execute the decree*
- 3. For statis on 11/05/2020*
- 4. Parties to appear*

*E.G.RUJWAHUKA*

*DEOUTY REGIDTRAR*

*27/4/2020"*

On the following day, that is 28/4/2020 in the absence of the parties, the Deputy Registrar recorded in the file, I quote:

*"1. On processing dealing with this matter on execution, I discovered that, I have already entertained the other matter of the same parties, for the impartiality and for the interest of justice I hereby disqualify from entertaining this matter, let this matter be scheduled before Honourable Deputy registrar incharge for – re assignment,*

*E.G.RUJWAHUKA*

*DEOUTY REGIDTRAR*

*27/4/2020"*

This order did not please the applicant they then filed the present application. In the affidavit in support of the application, applicant counsel raise two issues that

1. The registrar had no jurisdiction to give such orders
2. That registrar did not exercise the said powers if any judiciously.

In his submission in support of the application Mr. Deus Richard counsel for the applicant stated that the Deputy Registrar disregarded the information and excuse brought before her by the counsel who was holding brief for the counsel for the judgement debtor. The records are silent on whether the decree holder was given chance object to the submission made by the judgement's debtor's counsel. On this, Mr. Deus said the Deputy Registrar misdirected herself.

Again, submitted Mr. Deus that a day after giving an attachment order, deputy registrar recalled the file in the absence of the parties and withdrew herself from the conduct of the matter on the ground that she had conducted similar proceedings between the parties. This was wrong, said the applicant counsel because the Registrar disqualified herself after she had given an attachment order. He prayed for the court to allow the revision and set aside the execution order.

On the first ground for revision, Mr. Deus said the Deputy Registrar had no jurisdiction to determine the execution proceedings emanating from the CMA award. He cited section 89 (2) of the ELRA, section 50 (3) of the Labour Institution Act , Rule 48 (3) of the Labour Court Rules and section 4 of the

Employment and Labour Relation Act, which all read together they provides that powers to execute CMA awards is vested on the High Court Labour division. He cited to the court the case of **Serenity on Lake LTD Vs Dorcus Martin Nyanda**, Civil revision No 1 of 2019.

Mr. Biyengo Pastory appeared for respondent opposed the application. He said, the Registrar had jurisdiction to entertain the matter. He argued that section 89 (2) do not say specifically that CMA awards are to be executed by the High Court, therefore Deputy Registrar had jurisdiction.

Mr. Biyengo said there is nothing to fault the deputy registrar's order in grounds 2 of the revision. He said the D/R disqualified herself after she had given the order and therefore there was nothing wrong with the order given on 27/4/2020.

I will being with ground one of the revision, that the Deputy Registrar had no jurisdiction to execute CMA's award. With due respect to the learned counsels for the parties, it is clear with the amendment of the Labour Institution Act vide the Written Laws (Miscellaneous amendments) (Act No. 2) Act. 2020, that Deputy Registrar of the High Court Labour Division has

powers to entertain matters as conferred under Order XLIII of the civil Procedure Code. The amendment repealed section 54 of the Labpur Institution Act and replaced it with the following words:

*"Section 54: there shall be deputy Registrars who shall exercise powers and perform such duties as are conferred under*

- (a) Section 28 (8) of the Judiciary Administration Act;*
- (b) Order XLIII of the Civil Procedure Code; and*
- (c) Rules made by the Chief Justice under section 55"*

Among the duties by the deputy registrars stipulated under order XLIII is execution. Order XLIII (1)(g) and (h) reads:

*1. Subject to any general or special direction of the Chief Justice, the following powers may be exercised by the Registrar or any Deputy or District Registrar of the High Court in any proceeding before the High Court-*

*(g) to order that a decree be executed under Order XXI, rule 21;*

*(h) to issue process for execution of a decree under Order XXI, rule 22;*

Therefore, the reference made under section 89 (2) of the ELRA read together with the amendments above, gives one conclusion that Deputy

registrar is vested with power to execute CMA awards. This complain is therefore without merit.

The second issue is without doubt justified. The Deputy Registrar was biased when giving her order for execution of the CMA's award. As stated above, she gave an attachment order on 27/4/2020 and a day after on 28/4/2020, without parties in attendance, she disqualified herself on the ground that she had handled other similar matter between the same parties. The question is, was such a disqualification and the reasons given thereon, affected the execution proceedings particularly attachment order given on 27/4/2020. The answer is directly yes. Why?

Looking at the proceedings, and as alluded to above, judgement debtor was absent on the date the attachment order was given. His counsel had asked his fellow advocate to hold his brief on the reason that he was attended another matter before the High Court Dar es salaam. This reason was rejected without even giving the opposite party an opportunity to object or not.



Moreover, the records are not clear as to what moved the Deputy Registrar to call the file on 28/4/2020 alone in chambers, and disqualify herself from the conduct of the case of which she had given an order for execution. Parties to this revision could not memorize any proceedings of similar nature between them to have been attended by the said Deputy Registrar. It is on this ground that I find appropriate to have the matter attended afresh by another Deputy Registrar. This will not only bring into the light the justice required but will facilitate the seeing by the parties of the justice being done to them all.

This being the case, I allow the revision quash and set aside the execution proceedings and its resultant orders with an order that Execution No. 9 of 2020 be determined afresh by another Deputy Registrar.

It is so ordered.

**Dated at Shinyanga, today, 21<sup>st</sup> August, 2020.**



*E.Y. Mkwizu*  
**E.Y.MKWIZU**  
**JUDGE**  
**21/8/2020**