

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(LABOUR DIVISION)**  
**AT ARUSHA**

**MISCELLANEOUS APPLICATION NO. 30 OF 2020**

*(Arising from HC of Tanzania at Arusha Execution No. 77 of 2018, Originate from CMA  
Labour Dispute No. CMA/ARS/ARB/47/2018)*

**THE REGISTERED TRUSTEES OF BARAZA**

**KUU LA WAISLAMU TANZANIA (BAKWATA) ..... APPLICANT**

**VERSUS**

**ROSE EMMANUEL SECHUMA ..... 1<sup>ST</sup> RESPONDENT**

**SILAS BETHUEL KONE ..... 2<sup>ND</sup> RESPONDENT**

**AMANA BANK ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

*Date of Last Order: 18<sup>th</sup> August, 2020*

*Date of Ruling: 6<sup>th</sup> October, 2020*

**Masara, J**

The Applicant filed this Application under Order XXI, Rule 57 of the Civil Procedure Code, 1966 (Revised Edition 2019) and Rules 24(1), 24(2) (a), (b), (c), (d), (e) and (f), 24(3) (a), (b), (c) and (d), and Rule 28(1) (a), (c), (d) and (e) of the Labour Court Rules, GN No. 106 of 2007, craving for this Court to be pleased to investigate the attachment of the Applicant's learning institution's account Number 005120123240001 – AMANA BANK registered with the name of BONDENI SECONDARY SCHOOL attached in execution of the award of the Commission for Mediation and Arbitration at Arusha (CMA-Arusha) in Labour Dispute No. CMA/ARS/ARB/47/2018 and postpone the

Garnishee Order NISI issued by this honourable Court in Execution No. 77 of 2018. The application is supported with a sworn affidavit of **Nuhu Jabir Mruma**, the Applicant's Official Representative. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents opposed the Application and filed a joint counter affidavit attested by the said Respondents.

In a nutshell, the facts of this matter as can be deduced from the affidavit supporting the Application are that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are Decree holders in respect of Execution No. 77 of 2018 which is still pending for final orders in this Court. The Decree debtor is said to be Zaim Education Development Limited. That Execution No. 77 of 2018 was heard and decided ex-parte in favour of the Decree holders and a Garnishee Order Nisi against the Applicant's Trustor and Zaim Education Development Limited issued. That the said Order restrained the 3<sup>rd</sup> Respondent from remitting the sum of Tshs. 13,009,614.60 or part thereof from Account Number 005120123240001 to any person. The Applicant argues that the said account which is registered in the name of Bondeni Secondary School is not the property of the Decree debtor, but of the Applicant's trustor. This fact is disputed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

When the application was called for hearing, **Mr. Hemed Semith**, Learned Advocate, appeared for the Applicant while **Ms. Emiliana James**, Learned Advocate, appeared for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The 3<sup>rd</sup> Respondent did not enter appearance and did not file a counter affidavit. The issue for

determination in this Application is whether Account No. 005120123240001 at Amana Bank was liable to attachment.

Submitting in support of the Application, Mr. Hemed vehemently contested that it was wrong to attach the said account as the Applicant was not a party to the proceedings in Labour Dispute No. CMA/ARS/ARB/47/2018 and was also not a party to Execution No. 77 of 2018 which resulted in the grant of the Garnishee Order Nisi. The learned Counsel argued that the inclusion of BAKWATA in the Garnishee order makes the Order incurably defective. He further argued that as Bondeni Secondary School belongs to BAKWATA, similarly, all money deposited in its account belongs to BAKWATA and hence its account is not liable to attachment. He therefore prayed that the Garnishee order issued in respect of the account be lifted and the Decree holders be tasked to proceed against properties of the Decree debtor.

Ms Emiliana, on the other hand, vehemently opposed the Application contending that Account Number 005120123240001 does not belong to the Applicants but to the Decree debtor. She sought to rely on the CMA Award whereby the same stipulated that the Applicant had transferred the affairs of Bondeni Secondary School, including the Accounts, to the Decree debtor. She asked the Court to dismiss the Application.

I have meticulously considered the rival submissions of the learned counsels for the parties herein and the affidavits deposed for and against the Application. I note that the information supplied by the Applicant in this

Application is not sufficient to enable this Court to make an informed decision regarding the application herein. Why both the Applicant and the Respondent decided to withhold vital details regarding the decisions antecedent to the issue of the Garnishee Order is beyond comprehension.

The Applicant allege that the Applicant herein was not a party to the labour dispute and the Execution proceedings before the CMA and the Deputy Registrar respectively. None of the parties made the proceedings or decisions thereof available to this Court. The Respondent's counsel, for instance, indicated that she was relying on the CMA Award regarding the issue of the Decree debtor's ownership of properties belonging to Bondeni Secondary School, including bank accounts. Such award was not tendered nor is it part of the counter affidavit of the Respondent. Similarly, the Applicant's counsel submitted that Bondeni Secondary School's account belongs to the Applicant to the exclusion of the Decree debtor, unfortunately there is nothing on record to substantiate that claim. Furthermore, none of the parties described why the Applicant was included in the Garnishee Order Nisi, if at all there was no relationship between them and the Decree debtor.

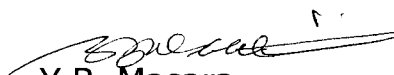
It was important that all vital information is supplied to this Court for the Court to make an informed decision. The Applicant did not deem appropriate to even join the Decree debtor in this Application. That is rather surprising as their inclusion would invariable answer some of the questions that this Court find wanting. In law, the burden to prove a fact in issue lies on the party who desires the court to resolve that issue in his favour. The burden

of proof in civil cases is provided for under sections 110 and 111 of the Evidence Act. In those sections, and as enunciated in a number of authorities by the Court of Appeal, the burden of proof lies on the person who alleges. See ***Hemed Said Versus Mohamed Mbilu*** [1984] TLR 113 and ***Bakari Mhando Swanga Versus Mzee Mohamed Bakari Shelukindo and 3 Others***, Civil Appeal No. 389 of 2019 (Unreported). I note that the Applicant has not provided sufficient evidence to prove that Account Number 005120123240001 belonging to Bondeni Secondary School, and which is a subject of the Garnishee Order Nisi issued by the Deputy Registrar in Execution Cause No. 77 of 2018, does not belong to the Decree debtor and thus not subject to attachment.

Consequently, and on the strength of what I have endeavoured to state hereinabove, this Application fails. The Order of the Deputy Registrar restraining the third Respondent from releasing the moneys in Account No. 005120123240001 at Amana Bank is maintained. The same may be lifted by the issuing Court once it is satisfied that the same is not the property of the Decree Debtor or after payment of the amount owed to the Decree debtor.

It is so ordered.



  
Y.B. Masara  
**JUDGE**  
06.10.2020