

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

MISC. LABOUR APPLICATION NO. 15 OF 2020

(Originating from Execution No. 73 of 2019)

SAMWEL NYALLA NGHUNI1TH APPLICANT

RAPHAEL Z. SHILLATU2ND APPLICANT

MARTHA MUSIBA3RD APPLICANT

STEVEN DOGANI DIALLO4TH APPLICANT

LUCAS SAMWELI5TH APPLICANT

VICTORIA AGRICULTURAL MACHINERY

CORPORATION LTD6TH APPLICANT

VERSUS

PATRICK OSORO NYAWANGAH RESPONDENT

RULING

Date of last Order: 04.12.2020

Date of Ruling: 11.12.2020

A.Z.MGEYEKWA, J

This is an application brought under section 24 (1), 24 (2) (a),(b), (c), (d), (e) and (f) and 24 (3) (a), (b), (c) and (d), Rule 28 (1), (c) and Rule 55

(1) of the Labour Court Rules GN.No.106/2007, section 91 (3) of the Employment and Labour Relations Act, No.6 of 2004 and Order XXI Rule 57 (1) and (2) of the Civil Procedure Code Cap. 33 [R.E 2019]. The applicant filed a Notice of Application, Notice of Representation, Chamber summons accompanied by an affidavit deposed by Raphael Z. Shillatu, the second applicant.

The respondent challenged the application by filing a Notice of Representation, Notice of Opposition and Joint Counter-Affidavit deposed by Mr. Patrick Osoro Nyawangah, the respondent.

In support of his application, the learned counsel for the applicants urged this court to adopt the applicant's affidavit deposed by the second applicant. The learned counsel for the applicant submitted that this is an application for objection proceedings and their prayers are based on paragraph 2, 4, 5, and 6 on the second applicant's affidavit. He went on to state that on the second paragraph the applicant stated that the respondent instituted a Labour Dispute No. CM/MZ/NYAM/533/2018 and in 2018 the parties settled the matter. He added that thereafter the applicant filed an Execution Application No. 64 of 2018 but the application was remitted back to the CMA.

Mr. Boniface continued to argue that the respondent filed another Labour Dispute No. 311 of 2019 in respect to CMA/MZ/NYAM/311/2019 whereas the Mediator forwarded the application for execution. He went on to state that the respondent filed an Execution No.73 of 2019 and the applicants claimed that the property subjected for execution belongs to them. Mr. Boniface went on to state that the motor vehicles listed under paragraphs 5 and 7. The learned counsel for the applicant strenuously contended that the applicants are complaining that the respondent has executed their properties, they are praying this court to intervene and investigate the matter and order a stay of Execution No. 73 of 2019.

Mr. Boniface did not end there, he argued that in accordance to Order XXI Rule 56 (1) of the Civil Procedure Code Cap.33 [R.E 2019], the High Court is mandated to investigate the claims. He added that the applicants are complaining that they are not part of the dispute and they have attached eight registration cards to prove that the motor vehicles belong to them and they have attached the contracts of sale. He insisted that the properties belong to the applicants. Mr. Boniface fortified his submission by referring

this court to the cases of **Philipo Joseph Mkonde v Faraji Said**, Civil Appeal No. 74 of 2019 (unreported).

It was Mr. Boniface further submission that he has gone through the respondent's affidavit particularly paragraph 7 and argued that the respondent have stated that the applicants' claims are disputed. In his view, he thinks that the the respondent has not objected. To bolster his argumentation he cited the case of **East African Cables (T) Ltd v Spencon Services Ltd**, Commercial Case No. 42 of 2016.

On the strength of the above the learned counsel urged this court to stay the Execution No.73 of 2019.

Resisting the application, Ms. Milembe urged this court to adopt the counter affidavit and form part of her submission. She argued that there was a Labour Dispute between Sahara Media Group against Patrick Osoro Nyawangah. She went on to state that the parties settled their dispute and the respondent proceeded to execute Execution No. 64 of 2018 but it was struck out. She added that the parties were directed by the Deputy Registrar to go back to the CMA to insert a paragraph to show in case Sahara Media fails to honour the settlement then Patrick could proceed with execution. In

her view there was no any new dispute No. 311. She went on to state the respondent has a right to execute the award since they entered into an agreement and the court recognized that the settlement can be executed.

She went on to state that the CMA issued an order of execution of seven motor vehicles, the properties of Sahara Media Company Ltd. She added that there is nowhere shown whether the ownership of the said motor vehicles was transferred. She went on to state that as per the attached contract it shows that the purchased Motor Vehicles were bought in 2016 and 2017. It was Ms. Milembe's view that from the date when the motor vehicles were bought, the applicants had time to transfer the ownership but the learned counsel for the applicants has shown that the transfer is in progress. She distinguished the cited case of **Philipo Joseph Lukonde** (supra).

In his short rejoinder, the applicant counsel reiterated his submission in chief.

I have considered the submissions for and against the application, and I now propose to make my determination thereof. The applicants are applying for a stay of execution order issued by the CMA in Execution Application No.73 of 2019 claiming that the attached properties belongs to

the applicants. In support of his submission, the learned counsel for the applicants referred this court to the eight motor vehicles registration cards. Mr. Boniface is claiming that the applicants are in the process to transfer the ownership of the said motor vehicles.

I have perused the agreement for sale dated 18th August, 2016 between Sahara Media Group Limited and Samwel Nyalla whereas Sahara Media Group Limited sold the motor vehicle (Landcruiser Prado) with registration No. T932 AQU to Samwel Nyalla. However, it is uncontested that the motor vehicles registration cards are in the name of Sahara Media Group Limited.

The learned counsel has based his submission in the said contract which is in exclusion of the 3rd, 4th, 5th 6th, and 7th applicants. It is well settled that the execution of a sale agreement does not transfer ownership/title. Ownership can only be acquired by a registered deed of conveyance. However, even the 1st and 2nd applicants cannot rely on the said contract to justify that they are lawful owners of the said motor vehicles. A contract by itself does not suffice to move this court to find out that the applicants are in the possession of the motor vehicles. What matters is the transfer of ownership from Sahara Media Group Limited to the applicants which is not done. Therefore the applicants' ground cannot stand. As rightly pointed out

by the learned counsel for the respondent the cited case of **Philipo Joseph Lukonde** (supra) is distinguishable from the present case since in the instant case the ownership of the said motor vehicles was not transferred to the applicants as the contracts of sale are in the name of Sahara Media Group Limited.

For the aforesaid reasons, I proceed to dismiss the application without costs.

Order accordingly.

DATED at Mwanza this 11th December, 2020.




A.Z.MGEYEKWA

JUDGE

11.12.2020

Ruling delivered on the 11th December, 2020 in the presence of Ms. Milembe, learned counsel for the respondent, and holding brief for Mr. Sariro, learned counsel for the applicant.


A.Z.MGEYEKWA

JUDGE

11.12.2020

Right to appeal fully explained.