

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

AT ARUSHA

**CONSOLIDATED MISC. LABOUR APPLICATIONS NO. 80, 81, 83 AND 85 OF
2020**

**(Arising from Labour Execution Applications No. 84 of 2019 & 85 of 2019, Labour
Commissioner's Compliance Orders AR/LAI/04/VOI.1/14 AND ARU/LAI/04/41)**

IMPALA HOTEL LIMITED.....1ST APPLICANT/JUDGMENT DEBTOR

NATIONAL BANK OF COMMERCE.....2ND APPLICANT/CREDITOR

VERSUS

LABOUR OFFICER 1ST RESPONDENT/DECREE HOLDER

NUTMEG AUCTIONEERS PROPERTY

MANAGER CO. LTD. 2ND RESPONDENT/COURT BROKER

RULING

4/12/2020 & 8/2/2021

GWAE, J

This ruling emanates from applications made by the applicants herein above against the Labour Commissioner exercising his power in terms of section 43 of the Labour Institution Act No. 7 of 2004, Cap 300 Revised Edition, 2002 (Act) and acting on behalf of the 1st applicant's employees and 2nd respondent, a court broker appointed by the court to attach and sale the 1st applicants' properties in order to satisfy the decree originating from Labour Commissioner's two compliance orders.

The 1st applicant prays vide his applications (80 of 2020 and 81 of 2020) are for an order lifting attachment orders duly issued by the Deputy Registrar of the court and an order declaring applications for execution filed in this court a nullity that is Execution Applications No. 84 of 2019 a decree in the tune of Tshs, 100,134,444/=being employees' salaries attached properties being eight 1st applicant's motor vehicles whereas in the Execution Application No.85 of 2019, decree amounting to Tshs. 397,607,000/=and attached property being plot No. 20,21,22,22& 23 Block "B" at Uzunguni area and Plot No. 16, 17, 18 and 19 Block "B" at Uzunguni area in Arusha city).

Whereas, the 2nd applicant filed Application No. 85 of 2020 against the Execution Application No. 85 of 2019 duly filed by the 1st respondent praying for an order postponing the intended sale of the attached plots pending investigation to establish his rights over the attached plots which were used as debentures by the 1st applicant to secure loans.

Through an affidavit of advocate Richard Massawe, the 1st applicant avers that the decree holder attached property worth more than Tshs.5 billion which is far beyond the decree (Tshs. 397,607,000/=) that, the 1st applicant has stopped its operation, that the compliance order was illegal since it was not issued by the Labour Commissioner and that the same was not served to the employer (surviving director and appointed administrator) and that during hearing of execution, one

Herode purported to be 1st applicant's principal officer without formal notice and that the 1st applicant was not given right to be heard.

During hearing of Misc. Application No. 80 and 81 of 2020, the 1st applicant was represented by **Mr. Richard Massawe** assisted by **Mr. Miraji Ngereka**, both the learned advocates whereas **Mr. Emmanuel Mweta** (labour officer) and **Mr. Boniface Buberwa** (2nd respondent managing director) appeared for the 1st and 2nd respondent respectively.

Mr. Massawe reiterated what is contained in his sworn affidavit whereas the 1st respondent's representative argued that he was performing his duties under direction of the Labour Commissioner as one who has been delegated the powers pursuant to the provisions of Act No. 7 of 2004 and that the compliance order was served to one Rehema Mushi/employer's cashier adding that one Randle Mrema appeared during hearing of the employees' complaints

In his rejoinder, Mr. Richard stated that the said Randle has never been a director of the 1st applicant adding that the compliance order was to be sent to the Labour Commissioner and that is by virtue of section 46 of the Act.

And when Misc. Labour Application No. 85 of 2020 was called on for hearing the same 1st applicant's advocates and representatives for the 1st and 2nd respondent whereas **Mr. Wilbad Massawe**, the learned advocate appeared representing the 2nd applicant.

Arguing application No. 85 of 2020, Mr. Wilbad argued that his client is ready to receive any surplus after payment of the 1st applicant's employees after the public auction of the 1st applicant's attached properties on the said plots located at Corridor/uzunguni area whereas Mr. Richard Massawe conceded to the fact that they are planning to pay the employees, Mr. Emmanuel Mweta did not object the 2nd applicant's application only if the 1st applicant's employees are given 1st priority after the sale of the attached plots.

As to the competency of the compliance order, I am alive of the principle of delegation in the performance of government duties. Generally, delegation is always there unless it is prohibited by the law as opposed to sub delegation. According to section 43 (6) of the Act, a labour officer may file a compliance order for execution as may be done by the Labour Commissioner. For the sake of clarity section 43 (6) is reproduced herein under;

"The Labour Commissioner may apply to the Labour Court to enforce the compliance order if the employer has not complied with the order and has not objected to the order in terms of section 47(1).

According to interpretational section 2 of the Act, the word 'a Labour officer' denotes a labour officer stipulated in section 43 (3) of the Act including a Labour Commissioner, Deputy Labour Commissioner appointed pursuant to section 43 (1) of the Act. Looking at the wording of the quoted provision of the law, to my view,

the Labour Commissioner or labour officer may file an application for execution of a compliance order which has not been complied with and no objection of now that has been preferred to the Labour Commissioner by the employer/applicant. I have also looked at the compliance orders which were copied to the employer/1st applicant as well as Labour Commissioner, by necessary implication the same were served to the Labour Commissioner.

Since I have not found any fault in the compliance orders and subsequent orders of the Deputy Registrar. More so, considering the 1st applicant's concession to liability and his readiness to pay his employees via the 1st respondent and absence of no objection from any secured creditors, it follows therefore, no merit of this application. The same is thus dismissed with no order as to costs.

Consequently, Misc. Labour Application No. 80 and Misc. Labour Application No. 81 of 2020 are hereby dismissed for lack of merit and Misc. Labour Application No. 85 of 2020 is hereby granted to the extent that the 2nd applicant, NBC is entitled to whatever surplus obtained from the property that is plot No. 20, 21, 22, 22& 23 Block "B" at Uzunguni area in Arusha city listed in the execution form as well as in the proclamation of sale issued by the Deputy Registrar on the 20th October 2020.

However, for the interest of justice I hereby postpone or currently decline to order the sale of properties located at Plot No. 16, 17, 18 and 19 Block "B" Uzunguni area in Arusha City unless the sale proceeds in respect of Plots No. 20

to plot No.23 aforementioned do not satisfy the employees' decrees and other secured creditors particularly, NBC.

As these applications have been pending in court since November 2020 and taking into account that the employees represented by the 1st respondent have not been paid their salaries to date despite the 1st applicant's admission of the liability/claim, I therefore order expeditious public auction by the 2nd respondent after his adherence to the necessary procedures including advertisement.

Order accordingly




M. R. GWAE
JUDGE
8/02/2021