

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

AT ARUSHA

CONSOLIDATED MISC. LABOUR APPLICATIONS NO. 83 AND 84 OF 2020

**(Arising from Labour Execution Applications No. 83 and 84 of 2019, Compliance
Order Ref. No. ARU/LAI/253/23)**

NAURA SPRING HOTEL..... APPLICANT/JUDGMENT DEBTOR

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 is emanating from two applications filed by the applicant, **Naura Spring Hotel** against the Labour Officer representing the applicant's employees by virtue of section 43 of the Labour Institutions Act No. 7 of 2004 ('Act') and the above-named 2nd respondent

Essentially, the applicant is seeking orders of this court lifting attachment order duly issued by the Deputy Registrar against his properties and an order declaring an application for execution a nullity in respect of Execution Applications

No. 83 of 2019 of a decree in the tune of Tshs, 34,684,000/=being her employees' salaries. The order issued by the Deputy Registrar attaching applicant's movable properties, five motor vehicles, these are as follows; motor vehicle with Reg. No. 182 AAQ Toyoat Coaster, M/V T. 447 APG Toyota coaster, M/V T. 543 APL Toyota Coaster, M/v T. 945 AEZ Mitsubishi canter, M/v T. 991 BWB Toyota Noah.

According to the applicant's affidavit sworn by his advocate, Mr. Richard Massawe, the grounds of these applications are; that, whether the compliance orders were issued in compliance with the law, whether the applicant was denied right to be heard, whether it was proper for the 1st respondent to institute the execution application no. 83 of 2019, whether a person purporting to be a principal officer of the 1st applicant was legally appointed and whether the proceedings and orders issued were tainted with illegalities.

During hearing, the applicant was duly represented by advocate **Richard Massawe** assisted by **Mr. Miraji Ngereka** whilst Mr. **Emmanuel Mweta** (labour officer) and **Mr. Boniface Buberwa** appeared for the 1st and 2nd respondent respectively.

Supporting these applications, Mr. Richard reiteratedly argued that it was the labour Commissioner who was to file the execution applications and not a labour officer and that compliance was to be served to the applicant's managing Director, Palegia Auye Mrema and or representatives of the late **Michelle Auye**

Mrema (deceased), which was not the case and that, one **Helode Bilyamtwe** were not formally appointed to be the 1st applicant's principal officers.

The applicant's counsel went on arguing that the applicant's properties are not liable to attachment and sale by the order of the court since the 1st respondent's customers/clients are unsecured creditors and that, the applicant is guarantor and borrower to the National Bank Commerce. He added that, there are viable plans by the applicant so that the company can smoothly run and employees be conveniently paid their salaries.

In his response, Mr. Emmanuel raised a preliminary objection on locus standi since there is no company's resolution letter and or any letter instructing the applicant's advocate. He argued opposing the applications by stating that, the labour officer had mandate to file application for execution on behalf of the labour Commissioner and that, during hearing of the employees' complaints one Randle Mrema and Helode were entering appearance through the company's resolution dated 14th March 2019. The respondent's representative then prayed for an order dismissing the applications.

In his rejoinder, Mr. Miraji stated that the PO raised by the 1st respondent's representative is baseless as the same does not meet the requirements enunciated in Mukisa's case. Therefore, he prayed the applications be dismissed. He thus prayed the PO be overruled. He reiterated that, the compliance order was not properly served to the applicant which means that an issue of no objection and

limitation of time does not arise adding that the office of Labour Commissioner and that of Labour officer are two different offices with different obligations.

Starting with the preliminary objection orally raised by the 1st respondent's representative, I am of the view that the same requires proof. It cannot be relied on itself to justify this court to hold that, the applicant's advocate has no requisite authority to institute the case and to appear. As correctly submitted by Mr. Miraji, the preliminary objection must be on a purely point of law, requiring no ascertainment or proof by the court except the facts pleaded by the parties. This position was rightly and judicially stressed in the most famous case of **Mukisa Biscuit Manufacturing Co. Limited vs. Westend Distributors Limited** (1964) E. A 696 where it was stated that;

"A preliminary objection is in the nature of what used to be a demurrer. It raises pure point of law which when argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or what is sought is the exercise of judicial discretion."

Thus, in our resent applications, the PO raised by the representative for the applicant is baseless as it requires further proof. I therefore overrule it as I hereby do.

In the ground of the alleged impropriety of the compliance order (s), I am aware of the principle of delegation in the performance of government duties.

Generally, delegation is always there unless it is prohibited by the law. 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).

In our applications, it is undisputed fact that the execution applications were filed by the labour officer and not Labour Commissioner as envisaged by section 43 (6) of the Act however according to interpretational section, section 2 of the Act, the word 'a Labour officer' includes a Labour Commissioner, Deputy Labour Commissioner.

Looking at the wording of the quoted provisions of the law, to my view, the Labour Commissioner or Deputy Labour Commissioner or labour officer may file an application for execution of a compliance order which has not been complied with and no objection that has been preferred to the Labour Commissioner by an employer. The Labour Commissioner cannot be in a position of filing execution applications in each region and or each District. He must therefore delegate his powers.

In the applicant's ground of alleged non-service of the compliance order to the employer/applicant. The law is very clear that, the compliance order was to be served to an employer, employee affected however the non-service of the order does invalidate the same (See section 43 (3) of the Act). This ground is equally found to have been misplaced.


On the complaint that, one Randle Mrema was not director of the applicant, to my considered view, it does not carry any weight since according to the meeting held on the 14th March 2019, the said Randle Mrema was appointed to be a director together with one Janeth William Kimaro to assist the remaining Director of the applicant (Pelagia Auye Mrema). Similarly; the assertion that, Mr. Helode was not recognized by the applicant nor did he file notice of representation is of no weight since Mr. Herode who was making appearances on the applications for execution in favour of the applicant before the Deputy Registrar however, in my view, that alone does not make the compliance order or attachment order invalid since neither the remaining director, Pelagia Auye Mrema nor the newly appointed two directors namely; Randle Mrema and Janeth William Kimaro have presented their affidavits for filing to support the applicant's contention. The evidence of the applicant's directors was material and helpful in assisting the court (See the decision of the Court of Appeal when dealing with similar situation in **John Chuwa v. Antony Chiza** (1992) TLR 223.

Moreover, the applicant's assertion that, his assets/properties are not subject of attachment and sale due to the fact that, the employees, the 1st respondent's clients are unsecured creditors on the ground that, the applicant is a guarantor and borrower to the National Bank Commerce (NBC) has no legs to stand since advocate Massawe Wilbad has expressly stated that, NBC is willing and ready to receive whatever surplus remains out of money obtained in the public auction vide Consolidated Misc. Labour Application 80 of 2020, 81 of 2020 and 85 of 2020. Worse still, no any other secured creditor who has filed an application objecting the sale of the attached motor vehicles.

In the foregoing reasons, I therefore find these applications are lacking any merit, they are therefore dismissed in its entirety. The 2nd respondent, court broker is directed to expeditiously and diligently proceed with sale process of the listed and valuated motor vehicles after conducting necessary advertisement.

Order accordingly




M. R. GWAE
JUDGE
8/02/2021