IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF MWANZA)

AT MWANZA

LABOUR REVISION NO. 55 OF 2020

RICHARD JULIUS RUKAMBURA ..... APPLICANT

VERSUS

TANZANIA LOCAL GOVERNMENT WORKERS UNION ..... RESPONDENT

JUDGMENT

6th July & 4th August, 2021

ISMAIL, J.

The application before me calls the Court to exercise its revisional powers to quash the proceedings, and set aside the ruling in Labour Execution No. 70 of 2019, issued by the District Registrar (DR) on 13th July, 2020. The contention by the applicant is that the said decision is erroneous on a number of grounds as follows:

(i) That DR the exercised jurisdiction which was not vested in him when he reduced the amount in the award;

(ii) That the DR failed to exercise the powers vested in him to execute the award in its wholesome and as mandated by section 89 (1) and (2) of the Employment and Labour Relations Act, Cap. 366 R.E. 2019 (ELRA);

(iii) *That the DR exercised his jurisdiction illegally or with material irregularity by assuming that part of the sum claimed and awarded to the applicant as unnecessary since the same was paid; and*

(iv) *That the DR committed a material error to the merits of the subject matter.*

The matter before the DR stemmed from the decision of the Commission for Mediation and Arbitration (CMA), in respect of Labour Dispute No. CMA/NYAM/429-197/2018, in which termination of the applicant's employment was censured. Besides ordering reinstatement, the respondent was ordered to pay the applicant all his dues to the date of reinstatement. The respondent opted not to reinstate, hence the applicant's decision to execute the award. His first attempt was referred back to the CMA with a direction that a computation be done to establish the quantum payable to the applicant. The computation came with a sum of TZS. 123,177,823.20.

The computation of the sum took the applicant back to the DR, enlisting his assistance for execution, through attachment of monies in several of the respondent's bank accounts. After reviewing the application, the DR whittled the award to TZS. 67,634,023.05, arguing that the excess sum of TZS. 65,543,800.15 was "unnecessary as the same has been fully

stated as being already paid or granted to him. Granting it now is equal to double payment and embezzlement of the public fund." The DR further held that the sum of TZS. 40,106,200/- was to settle the debt that the applicant guaranteed an employee, while TZS. 15,437,600.15 was dishonoured for missing necessary supporting documents. It is this decision that has raised the applicant's rage, hence the instant application. Details of the applicant's consternation are found in the supporting affidavit.

In the counter-affidavit affirmed by Twaha Mtengera, the respondent's attorney, the applicant's claims and contention are contested. The averment by the respondent is that the impugned decision was quite spot on, when it disregarded the payment of TZS. 123,177,823.20, since some of the said claim had been paid during the termination, while the balance constituted what was not rightfully his.

Hearing of the application was done in writing, through written submissions the filing of which was ordered on 6th July, 2021. Credit to the parties, the submissions were concise and focused.

Submitting in support of the application, the applicant submitted that the DR went astray and outside the scope of his powers, when he altered the award of the CMA and computations made on 25th September, 2019. The applicant contended that the sum of TZS. 123,177,823.20 covered his

benefits ranging between the date on which reinstatement was ordered to 25th September, 2019, and it includes all accrued benefits payable to him. He further submitted that, if the period is stretched to August, 2020, when the instant application was filed, then the sum jumps to TZS. 183,724,038.20, and he prayed that the same be fully liquidated by the respondent. He urged the Court to revise the DR's ruling and order that the decretal sum and all subsequent accruals be paid to him.

In his rebuttal submission, the respondent argued that the pertinent question for determination in this matter is whether, during the execution proceedings, the DR had powers to deduct the amount due from the applicant. Mr. Alhaji Majogoro, the respondent's counsel took the view that the law empowers the employer to recover outstanding debts or payments advanced to its employees. This is done through deductions from their remuneration, as was held in the case of ***Barclays Bank Tanzania Ltd v. Zephania Mkirya***, Revision No. 175 of 2017 (unreported), in which the employee's duty to repay a loan acquired during his employment was underscored. It is in view thereof that the counsel argued that the DR was right in deducting the outstanding sum from the employee's remuneration during execution.

The counsel argued that the applicant did not dispute that he was indebted to the employer, and that guaranteed some debts to the some of the employees. Mr. Majogoro argued that things would be different had the applicant denied any indebtedness to the respondent. He argued that denying it now exhibits nothing but an ill motive by the applicant. The counsel further argued that it is also unjust for the applicant to get paid subsistence allowance, house allowance, leave allowance, and such other payments while these payments had already been paid after the termination. He argued that an evidence, part of which is attached to the submission, was adduced during the proceedings before the DR. These include payment vouchers relating to CBA Bank and letters which proved the applicant's liability in respect of debts contracted or guaranteed by the applicant. The counsel considered that the application is baseless and urged the Court to dismiss it.

From the proceedings in the execution proceedings, the application, counter-affidavit, and submissions made by the parties, the broad question to be tackled is whether the application carries any merit warranting its grant.

It is common knowledge that enforcement of the CMA awards is a function performed by this Court, through the Deputy Registrars, consistent

with section 89 (2) of the ELRA; and Rule 48 (3) of the of the Labour Court Rules, GN. 106 of 2007 (the Rules). These are the tools that were used by the DR when the proceedings for execution were placed before him. They are tools that empower the DR to handle applications for execution of awards and orders issued by CMA and the Court in matters emanating from labour disputes. While it is generally agreed that powers of execution are bestowed on the DR, the propriety of carrying out of such powers ought to be assessed by resolving the following questions.

(i) *Is it the Registrar's duty to assess the benefits that should be or are payable to the decree holder? Are matters of evidence on the quantum payable within the remit of the Registrar?*

(ii) *What did the application for execution require of the Registrar?*

(iii) *Was the Registrar in a position to get into the propriety or otherwise of the computations? Is it part of the Registrar's duties?*

In my considered view, the duty of the DR was in this respect is very specific and narrow. It entails ensuring satisfaction of the award in the manner that has been proposed by the beneficiary of the award (the award holder). Such duty involves no more than satisfying oneself if the manner in which the execution is proposed is in conformity with the law. It also requires the DR to satisfy himself if the execution of the award has not been stayed

by any order of the Court. Anything out of that scope is an excessive exercise of the powers bestowed on the DR. My thinking gains a persuasive force from the decision of the Court in ***Hubert Lyatuu v. TANESCO***, HC-Revision No. 90 of 2018 (MZA-unreported), from which the following excerpt is extracted:

> *"In the impugned decision, the Registrar whittled down the bulky of the applicant's claims, from the humongous sum of 435,434,753.70 to a paltry sum of 17,052,000/- which was initially advanced and was not in contention. The question that arises from the Registrar's indulgence is whether her actions were within the execution powers vested in her. My unflustered answer to this question is an emphatic NO! As stated earlier on, performance of the Registrar's duties is guided by the spirit enshrined in Rule 48 (3) which is quite clear on the scope of the duties that the said judicial officer should perform. Such duties would not entail granting or validating humongous, arbitrary and unjustified sums quoted for execution. In my considered view, the Registrar did what she was not invited to do. Her role was not to carry out an assessment of what was to be awarded, and choose to grant part and reject the other part. Her duty was to ensure that the fruits of a decree passed in trial or any subsequent appeal, if any, are realized by the decree holder, in this case, the applicant. By indulging herself in the sifting process, the learned Registrar was in fact stepping in the*

shoes of the CMA arbitrator which is an error of profound proportion."

Thus, while it may be true that the applicant owed the respondent sums of money that arose out of loans taken or guaranteed by him and not fully liquidated, how the said debts would be recovered ought to have been the least of the DR's worries. The respondent would still inform the applicant of the indebtedness and have the sum owing netted off without enlisting the assistance of the DR. It follows, therefore, that the very act of entertaining an application which did not reflect what was in the CMA was nothing short of an affront to the law and the powers bestowed on the DR by section 89 (2) of the ELRA; and Rule 48 of the Rules. As stated in ***Hubert Lyatuu v. TANESCO*** (supra) *"it was an attempt to enforce what was not spelt out by any judicial forum, be it through an award, decree, ruling, settlement agreement or order. It was also tantamount to coming up with another award, distinct from what was ordered by the CMA."*

It is my considered view, that in such a circumstance, the recourse that the DR had was to follow the counsel that was given by the Court in ***Mary Mwaifunga v. TPC Ltd,*** in which it was held:

"Baada ya kusema hayo, nitaje kwamba moja ya mamlaka ya Msajili wa Mahakama hii, ni kukaza hukumu za maamuzi/tuzo za TUME. Chini ya sharia ya sasa, ***ni uelewa***

wangu kwamba tuzo inakazwa jinsi ilivyo; kwamba Wasajili hawana mamlaka kutafsiri; kutoa uamuzi/tuzo kwa suala ambalo halikuamuliwa au kutoa maelekezo kwa TUME. *Kama uamuzi haueleweki, au suala muhimu halikuamuliwa na TUME, Msajili anaweza kufanya mojawapo ya haya:* ***Moja****, anaweza kushauri wahusika/mhusika kuomba marejeo ya uamuzi wa TUME kwa jaji wa Mahakama hii, Jaji anaweza kuisahihisha; kuamua suala husika au kutoa maelekezo kwa TUME kutegemea utata uliopo chini ya Mamlaka yaliyotolewa na kifungu cha 91 cha Sheria ya Ajira ikisomeka na kanuni ya 28 ya Kanuni za Mahakama za kuendesha Mashauri (Labour Court Rules, GN 106 of 2007).*

Pili*, Msajili anaweza kufikisha jalada husika kwa Jaji Mfawidhi ambapo au yeye, au Jaji mwingine atakayemteua, atalipitia na kuchukua hatua atakayoiona inafaa kwa kutumia mamlaka ya sharia tajwa hapo juu...."*

By being tempted to turn himself to a 'debt collector', the learned DR dealt with an issue that never featured in the award that came up with the computation of the benefits payable to the applicant. They were matters which were contentious and would, most likely, require adduction of evidence to prove or disprove the claims. It is certain that such process would require a full hearing, akin to a trial proceeding before a forum. Such forum would not, in any case, be the office of the DR whose scope of

operation, in this case, is confined to matters pertaining to execution of an uncontested monetary award. Needless to say, the DR's conduct went far overboard and his actions bordered on an abhorrent travesty that is intolerable.

It is fair to conclude that what came out of the DR's misstep is a complete nullity that has failed the test of a fair process. In consequence, the said decision is hereby set aside, as are the proceedings that bred the impugned decision. It is ordered that the matter should be remitted back to the DR for carrying out the execution of the award. Should the respondent have any misgivings on the award, including validation and computation of the benefits, processes that entail challenging the decision either to the Court, or to the CMA should be followed as guided by the law.

Order accordingly.

Right of appeal duly explained.

DATED **at MWANZA** this 4th day of August, 2021.

M.K. ISMAIL

JUDGE