

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISC. CIVIL APPLICATION NO. 95 OF 2021**

*(Arising from Civil Reference No. 7 of 2019 original Execution cause No. 19 of 2019 in the*

*High Court of Mwanza at Mwanza)*

**PETER M. MSUNGU & 13 OTHERS.....APPLICANTS/DECREE HOLDERS**

versus

**THE D.E.D. SENGEREMA.....RESPONDENT/JUDGMENT DEBTOR**

**RULING**

9<sup>th</sup> & 30<sup>th</sup> September, 2021

**RUMANYIKA, J.:**

The application under Order XXI Rules 28 and 35(1) of the Civil Procedure Code is with respect to a variation order of the Commission for Mediation and Arbitration for Mwanza at Mwanza dated 26/2/2020 and decision and order of this court (Mgeyekwa, J) dated 13/03/2020 in favor of Peter Msungu & 13 Others (the applicants) where, in blacks and whites The DED Sengerema (the respondent) was ordered to pay them shs. 67,968,240/= being terminal benefits, according to records some 14 ex-employees of them having had been unfairly terminated on 24/10/2007 now say 14 years ago.

For avoidance of doubts therefore, essentially the applicants prayed for an order of arrest and committing the respondent to a civil prison having had refused, failed or ignored to pay the decree holders (the applicants) or, in the alternative compel the respondent to show cause why shouldn't he be sent to civil prison. The application is supported by joint affidavit of the applicants whose contents they adopted during audio teleconference hearing on 09/09/2021. Peter Msungu (the 1<sup>st</sup> applicant) also appeared for the 12 fellows. Mr. S. Matiko learned state attorney appeared for the respondent. I heard them through mobile numbers 0754870831 and 0754803815 respectively.

In his reply, but having had adopted contents of the counter affidavit, Mr. Matiku learned state attorney submitted that having had intended to settle, this time around only four of them appeared and the respondent was stacked. That following a deed of settlement executed by the parties in November, 2016, the 12<sup>th</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> applicants were paid and they were done save for the rest who did not appear but parties were bound by terms and conditions of the deed of settlement. That later on, but in their back the applicants came to court for execution of the CMA's

variation order that they adhered to, but partly. That the application was devoid of merits.

In their rejoinder, again for them the 1<sup>st</sup> applicant submitted that the court's decision was there to stay and they had not signed the alleged deed of settlement. That is all.

The central issue is whether contrary to the court order the respondent had refused or ignored to pay the applicants. The answer is yes. At least by conduct the respondent admitted having had unfairly terminated the applicants say 14 years ago that is to say on 24<sup>th</sup> October, 2007 much as also, they took cognizance, in favor of the applicants of the court order for shs. 67, 968, 240/= being terminal benefits. It being of November, 2016 or sometime before/after, between them the parties may have had executed such a deed of settlement so that, as alleged by Mr. Matiku, SA few of the applicants were fully/partly paid but the rest turned hostile which allegations all the time the applicants disputed fine, but with greatest respect the point was insufficiently raised before my learned sister Mgeyekwa, J or later in the CMA variation order such that now the element of settlement could have on any one of the two occasions been given consideration it deserved. In other words now say 1½ years ago the

court's decision and order dated 13.03.2020 it remained undisturbed to date until such time for same reasons the order were varied. Whether or not the respondent was dissatisfied by award and the court's order and they intended to challenge it, also it was immaterial. From the records on that one this court having had noticed intervention of the Regional commissioner's office also direction by Sengerema District Commissioner (letters with Ref. No. 4B.290/397/01 of 7.10.2020 and Ref. No. AB/52/213/01/82 of 27/08/2020) respectively refer. It is very unfortunate, it appeared that all this time the respondent also had ignored their legal advisors' reports and may be their opinion.

As I wind up, may remind the respondent of the general note and it is dictates of the rule of law therefore good governance that court orders were there either to be complied with or legally challenged not like it would seem here, simply being ignored by the judgment debtor. The respondent is with effect from 30/09/2021 committed to civil prison for a term of six (6) months but the order is suspended for two (2) months to let him make his house. Should the respondent not comply he would, without any further orders arrested and committed into a civil prison. The application is on that terms granted. It is so ordered.

Right of appeal explained.

  
**S.M. RUMANYIKA**  
**JUDGE**  
**24/09/2021**

The ruling delivered under my hand and seal of the court in chambers this 30/09/2021 in the absence of the parties.

  
**S.M. RUMANYIKA**  
**JUDGE**  
**30/09/2021**

