

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

AT ARUSHA

MISC. LABOUR APPLICATIONS NO. 75 OF 2020

**(Arising from Labour Execution Order No. 98 of 2018, Compliance Order via
ARU/LAI/579/26)**

NGURUDOTO MOUNTAIN LODGE.....APPLICANT

VERSUS

LABOUR COMMISSIONER..... 1ST RESPONDENT

NUTMEG AUCTIONEERS PROPERTY MANAGER CO. LTD...2ND RESPONDENT

RULING

09/08/2021 & 25/10/2021

GWAE, J

~~This ruling emanates from an application filed by the applicant, Ngurudoto~~
Mountain Lodge against the respondents, Labour Officer representing a total of 46
persons purporting to be the applicant's employees and Nutmeg Auctioneers &
Properties Manager Company Limited. The applicant is praying for the following
orders;

1. That, this court be pleased to issue an injunction restraining the respondents and respondents' agent, workers and any person working under the instruction of the respondents from executing labour officer's compliance order No. 98 of 2018 originating from

ARU/LAI/579/26 pending hearing and determination of an application for revision pending before the court

2. Any other order (s) as the court deems fit and just to grant

Through a sworn affidavit of one Edmund Rweyemamu Ngemela, the learned counsel for the applicant, the applicant is vigorously disputing to have employed the said forty-six (46) persons who alleged to have been employed by her (applicant) and that the 1st respondent filed an application for enforcement of the compliance order still pending in this court.

Grounds relied by the applicant for this application are as follows;

- a. That, it was wrong for the labour officer to file the application for execution for the award of Tshs. 231,189,504/=in favour of the complainants purporting to be employed by the applicant whereas the applicant strongly disputed the complainants being her employees as were host workers
- b. That, the 1st respondent was assuming the role of prosecutor and that of a judge
- c. That, the labour officer erred in law for his failure to explain the applicant her statutory right
- d. That, the 1st respondent erred in law for failure to evaluate evidence of both parties and give sound and justifiable reason

In his counter affidavit, the 1st respondent through Mr. Emanuel Mweta stated that, the complainants were employed by the applicant and attempted to show that their names are as per annextures but nothing was attached to the 1st respondent's counter affidavits

During hearing of the application, Mr. Karim Rashid, the learned advocate appeared for the applicant whereas the 1st respondent and 2nd respondent were represented by Mr. E Mweta, principal officer and Mr. Kasanova, the learned advocate.

With consensus of the parties' advocates to wit; Mr. Ngemela and Mr. Emanuel Mweta, the learned advocate and principal officer for the applicant and 1st respondent's respectively, this application was ordered to be disposed by way of written submission.

Illuminating what is contained in the applicant's application, the applicant's argued that the complainants' claims on arrears were barred by the law of limitation. He added that the 1st respondent being a labour officer would not be justifiably be fit person to file an application for execution since prior he acted as prosecutor and then a judge of his own case, thus contravening principles of natural justice. According to Mr. Ngemela, the one who would assume his duty of his behalf of filing the application for execution was Solicitor General as per Order 4 (1) (a) of the Solicitor General (Establishment) Order, 2018 G.N No. 50 of 2018 dated 13th February 2018.

Counsel for the applicant went on submitting that, there are error apparent on the list of 46 complainants since some have been repeatedly listed for instance No. 10 in the list attached is also in Number 18, number 11 is also listed in No. 19, number 12, number 12 who is also listed in number 20 and No. 13 who is also listed in No. 22.

In his reply to the applicant's written submission, the 1st respondent's representative argued that the applicant was afforded an opportunity of being heard since one Frank Mathew appeared representing the applicant in the capacity of the applicant's human resource. He also argued that the compliance order issued by the labour officer is wrongly challenged since the provisions section 44 (1), 46 (1), 47 (1) & 48 (1) of the Labour Institutions Act, Cap 300 Revised Edition, 2019.

Furthermore, Mr. Mweta argued that the complainants were employees of the applicant pursuant to her letter addressed to the Deputy Registrar of the Court (Annexure Arusha "2") admitting that the complainants were employed by one Gaston Msofe as a FreeLancer/service provider.

Admittedly, Mr. Mweta argued that, though the complainants have no contracts of employment but the same were found working with tools such as identification cards of their employer/applicant (Annexure Arusha "6") and when interviewed by the labour officer, they complained to have worked for a long time with the applicant without written contracts. He buttressed his argument by citing

section 61 of Cap 300 (supra) and decisions of this Court vide Consolidated Miscellaneous Application No. 80,81 and 83 and 85 of 2020 between **Impala Hotel vs. NBC and two others** (unreported).

Having briefly explained what the parties have argued against and for the application, I should now determine the above quoted applicant's grounds for this application.

In the 1st ground, that, it was wrong for the labour officer to file the application for execution for the award of Tshs. 231,189,504/=in favour of the complainants purporting to be employed by the applicant whereas the applicant strongly disputed the complainants being her employees as were host workers.

Examining the parties' submission, I find the issue as to whether forty-six (46) complaints were employees of the applicant or not, is seriously contented and, in my considered view, the same goes to the root of the compliance order itself. Generally, it is relatively unfair and unjust if a person purporting to be employed by a certain employer is paid a certain amount of money out of the arbitral award or compliance order while in a real sense he or she was not employed by such employee. It is also the view of the court that, while on the one hand, the law requires that, employees be protected by the labour laws but on the other hand the same laws require protection of employers as expressly provided under section 3 (a) of the Employment and Labour Relations Act, Cap 336 Revised

Edition, 2019 which provides for its principal objects which are; to promote economic development through economic efficiency, productivity and social justice.

With outmost respect with the 1st respondent's representative, the letter dated 28th July 2020 does not amount to an admission to have employed 46 complainants rather an express denial or disowning of the complaints as the applicant's employees, for the sake of easy reference part of the letter is quoted herein under;

"..that they started (sic) were under Mer. Gaston Msofe who was our FREELANCER Contractor working to ally my late father's companies and they had a mutual agreement (Never in writing) with my late father /owner/Director, Mr. Faustine Melleo Auye Mrema...."

Basing on the above quoted words, it is impossible the above words to be construed as legal admission by the applicant that, the complainants were her employees. More so, the names of the complainants which have been repeated as complained by the applicant such as Complainant No.10 also in 19, Complainant iNo. 12 also in Number 20, No. 13 also in Number 22.

More so, perusing the annextures so attached to this application, there is no service of the compliance order dated 30th July 2018 and if the complainants were not issued with written contracts of employment why there are contracts of

employment purporting to have been issued by the applicant but the same are not duly signed by the applicant except that, the said contracts of employment are vividly signed by those purporting to have been employed. Thus, a lot is left to be desired by the court.

The principles governing grant or refusal of an application for injunctive orders are clearly set forth in the eminent case of **Atilio v Mbowe** (1969) HCD 284 and correctly expounded by the Court of Appeal through its judgment in the case of **Tanzania Cotton Marketing Board v. Cogecot Cotton Co SA** (1997) TLR 63 where it was stated that;

"Before temporary or interlocutory injunction may be granted, there are legal requirements which must be met;

- (i) it must be shown that there are triable issues;
- (ii) it must be shown that the Applicant will suffer irreparable loss;
- (iii) it must be shown on a balance of convenience
more hardship and harm shall be suffered by the Applicant if the application is refused than will be suffered by the Respondent if the application is granted.
- (iv) whether the case is so clear and free from objection on equitable grounds that the court ought to interfere to preserve property without waiting for the right to be finally established, and
- (v) whether there has been a delay and the Applicant has come with clean hands.

Having noted the above anomalies complained of by the applicant which in my firm view, are triable or appealable, it therefore sounds to me that, if this


application is refused, it will be inequitable to enrich some of persons purporting to be employees and consequently, the applicant will obviously suffer irreparable loss as the compliance order is more questionable for the reasons explained above.

Basing on the finding of the 1st ground which is answered in affirmative, I do not see any reason to further dwell into determining other grounds raised by the applicant and argued by the parties' advocates. More so, some of grounds raised, goes to the merit or otherwise of the impugned Compliance Order issued by the Labour officer, the 1st respondent.

In the foregoing reasons, I therefore find this application is not without merit. It is granted. By virtue of section 91 (3) of the ELRA, the application for execution No. 98 of 2018 filed in this court is hereby set aside till hearing and determination of the applicant's application for revision or an appeal or any other remedy provided by the law. Each party shall bear its costs of this application.

Order accordingly




M. R. GWAE
JUDGE
25/10/2021