

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION AT ARUSHA

LABOUR REVISION NO.80 OF 2021

*(C/f Execution No.56 of 2020 at the High Court of Tanzania , Labour Division at Arusha,
Original Labour Dispute No.CMA/ARS/ARS/103/2020 at the Commission for Mediation
and Arbitration, Arusha)*

JUAPOLE INVESTMENT AND SAFARIS LIMITEDAPPLICANT

Vs

ANATHE S. PALLANGYO.....RESPONDENT

JUDGMENT

Date of last Order: 14-6-2022

Date of Ruling: 6-7-2022

B.K.PHILLIP,J

This application is made under the provisions of Rules 24(1), (2) (a) (b) (c) (d) (e) (f), (3) (a) (b) (c) (d) , 28 (1) (a) (b) (c) and (d), (2) and 55 (1) (2) of the Labour Court Rules, G.N. No. 106 of 2007. The applicant prays for the following orders;

- i) That the Honourable Court be pleased to call for the records of the proceedings and ruling in execution No.56 of 2020 , revise and set aside the ruling of the Registrar of the Labour Court delivered on 6th July 2021 by Honourable Nguvava on behalf of Honourable R.B. Massam, the Deputy Registrar.
- ii) That the Honourable Court the pleased to grant costs of this application.

- iii) Any other and further orders as this Honourable Court will deem just and equitable to grant.

The application is supported by an affidavit sworn by Mr. Jelle Kramer, the applicant's General Manager. The respondent filed a counter affidavit in opposition to the application. The applicant was represented by the learned Advocate Ernest Emmanuel of Aymak Attorneys, whereas the respondent was represented by his personal representative Ms. Aika Kweka.

A brief background to this application is that the respondent was employed by the applicant in the year 2019 as a security guard. His employment was terminated on 31st January 2020. Aggrieved by the termination of his employment he lodged his complaints at the Commission for Mediation and Arbitration (Henceforth "CMA") claiming that his termination was unfair. Thus, he claimed for payment of a total of Tshs 3,598,296/= which included compensation for unfair termination of employment among other claims. As usual, the determination of matter started by holding a mediation session. Fortunately, during mediation session the parties reached a consensus that the respondent shall be reinstated to his employment under the same terms and conditions which were in the previous contract of employment. The new contract of employment was agreed to start on 1st day of April 2020. A settlement agreement was signed to that effect by both parties before the Mediator. What transpired thereafter is the main bone of contention in the application in hand. The terms of the settlement agreement were not implemented as agreed. The parties are blaming one another for not adhering to what was agreed. Consequently, the respondent filed an application for execution of the

settlement agreement before this Court. The same was determined by the Honourable Deputy Registrar whose decision was to the effect that the parties should implement the terms stipulated in the settlement agreement. She made an observation that the applicant was not supposed to give the respondent new contract with new terms.

Aggrieved by the Ruling of the Deputy Registrar, the applicant lodged this application to challenge the same. I ordered the application to be disposed of by way of written submissions. The learned advocate Ernest Emmanuel, started his submission by adopting the contents of the affidavit in support of this application. He raised the following arguments; **One**, that the Deputy Registrar erred in law by advising the respondent to amend the application without being moved by the respondent. He contended that the Court has no legal duty to guide the litigants about the proper legal action to be taken. The Court cannot act as an adjudicator and litigant at the same time. He cited the case of **Vedastus Raphael Vs Mwanza City Council and two others, Civil Application No.594/08 of 2021** and **Laureno Mseya Vs Republic, Criminal Application No.4/06 of 2016** (both unreported).

Two, that the Deputy Registrar erred in law in failing to evaluate the applicant's evidence to the effect that the respondent was reinstated but refused to sign the new contract. He contended that in his Counter affidavit the respondent admitted that he was given a new contract but refused to sign it on the reason that it contains new terms and conditions. He was of the view that the applicant's admission that he refused to sign the new contract proves that he is the who frustrated the execution of

the settlement agreement. He contended that the new contract that was given to the respondent had no new terms and conditions, but had salary increment and other benefits in favour of the applicant . After refusing to sign the new contract the respondent never attended to work, that is, he absconded from employment. He implored this Court to grant this application.

In rejoinder, the respondent's personal representative, Ms. Aika Kweka, argued that the advocate for the applicant was supposed to object the order for amendment of the application before the Deputy Registrar, but he opted to not to do so. Thus, he is now stopped from faulting the same. There is no proof that the Deputy Registrar is the one who advised the respondent to amend the application for execution.

With regard to the decision of the Deputy Registrar, Ms. Aika submitted that the Deputy Registrar evaluated the evidence adduced very well and found out that the new contract had new terms and conditions. Ms. Aika maintained that the respondent refused to sign the new contract because it had new terms and condition different from the ones which were in the previous contract.

Having analyzed the rival arguments made by both sides and perused the Court's records, I have noted that the Deputy Registrar did not issue any order for amendment of the application for execution as contended by Mr. Emmanuel. The Court's records show that the learned Advocate Emmanuel is the one who raised the argument that the application for execution was supposed to be rectified so as to abide with the order

made by the CMA. Mr. Emmanuel's prayer was based on the fact that in his application, the respondent was praying for arrest of the respondent's principal officer and an order for implementation of the terms agreed in the settlement agreement. It is in record that following aforesaid concern raised by the Mr. Emmanuel, the applicant filed an amended application. In short, Mr. Emmanuel's argument that the Court acted as a adjudicator and litigant is not correct.

With regard to the merit of this application, upon perusing the Court's records, I have noted that the impugned decision do not state the new terms and conditions alleged by the applicant. Likewise, in this application the respondent has not stated the new terms and conditions which he thinks were detrimental to him. The law of evidence is very clear on the burden of proof. It provides that he who alleges has to prove. (See the provisions of section 110 of the Tanzania Law of Evidence Act). Since the respondent is the one who alleged that the new contract had new terms and conditions different from the previous one, then he was supposed to prove the same in Court. Looking at the arguments raised by both sides, I am inclined to agree with Mr. Emmanuel that the applicant herein fulfilled what was agreed in the settlement agreement because it is not in dispute that it provided the respondent with a new contract of employment. As I have alluded herein above, the respondent is the one who had the burden of proving that the new contract provided to him had new terms and conditions. I wish to add here that if at all the new contract had salary increment as alleged by the applicant and noted in the impugned decision, in my opinion that is something positive which was not supposed to be a

reason for the respondent's refusal to sign the new contract. Salary increment is one of the employee's right.

In addition to the above, according to the settlement agreement the respondent was supposed to resume to his work on 1st April 2020 after being provided with the new contract. It is not in dispute that the respondent did not resume to his work. The application for execution the subject of this ruling was filed on 27th May 2020, that is, after more than 30 days from the date the respondent was supposed to have resumed to his work. No any explanations have been given by the respondent on action he took immediately after noticing that the new contract have different terms and conditions as alleged. Under the circumstances, I am inclined to agree with Mr. Emmanuel that technically, the respondent absconded from work.

From the foregoing, it is the findings of this Court that this application has merit. The decision and order made by the Deputy Registrar is hereby set aside. This being Labour case I give no order as to costs.

Dated this 6th day of July 2022




B.K.PHILLIP

JUDGE