

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MWANZA SUB-REGISTRY)**

**AT MWANZA**

**LABOUR EXECUTION NO. 81 OF 2018**

*(Arising from Labour Execution No. 81 of 2018 originating from Labour Revision No. 68 of 2016)*

**MARYNESS JOHN KASHULI.....DECREE HOLDER**

**VERSUS**

**EDEN SCHOOL .....JUDGMENT DEBTOR**

**RULING**

29<sup>th</sup> March & 4<sup>th</sup> April, 2022

**DYANSOBERA, J.:**

This ruling is on an application made by the applicant herein praying for the indulgence of this court in ordering the arrest and detention of the respondent in prison as a civil prisoner. The respondent was served with a notice to show cause why she should not be committed to prison as a civil prisoner and she duly attended. It was not disputed that the applicant was employed by the respondent as a nurse at a monthly salary of Tshs. 180,000/=. On 16<sup>th</sup> January, 2016 her contract of employment was terminated. She successfully referred the labour dispute to the Commission for Mediation and Arbitration which ordered her to be reinstated and paid her entitlements. The respondent was aggrieved and came to this court on

revision. She lost. The efforts to execute the CMA award by attachment and sale of the respondent's properties proved futile. She then lodged this labour execution seeking to have the respondent arrested and detained in prison as a civil prisoner.

At the hearing of the application, the respondent appeared in person while the applicant was represented by her personal representative of her own choice one Nyanjugu Sadick.

Arguing in support of the application, Mr. Nyanjugu Sadick, the personal representative of the applicant submitted to the following effect. The applicant has filed this application seeking arrest and detention of the Manager, Eden School, the respondent one Charlotte Edward Karane until when she pays the decretal sum of sum of Tshs. 5,680,000/= originating from the order given by this court on 12.3.2019. On 7.5.2021 the judgment debtor paid Tshs 1,000,000/= and the above remaining amount is yet to be paid. Efforts were made to attach her motor vehicles that is Reg. T. 770 BSJ make Suzuki, and Reg. No. T.420 AUA Coaster but the same sum was not realised as while the former motor vehicle could not be traced, the latter vehicle was attached but later released by an order of the court after it was found that it was not the property of the judgment debtor.



After all efforts to attach property proved futile, the applicant deemed it proper to have the respondent arrested and detained as a civil prisoner; hence this application.

In her showing cause why she should not be detained as a civil prisoner, the respondent Charlotte Mbabazi told this court that she was sorry for what had happened. She said that recalled that a court broker attached a motor vehicle which belonged to Nyalunga and which was ferrying school children to school. The motor vehicle was released after it was established that it did not belong to the school. The respondent denied to have disobeyed the court's order arguing that she was not aware of what was happening in court.

It was her contention that she was told to pay Tshs. 2,600,000/= and gave the money to Joseph Mange and the motor vehicle was released. The owner of the motor vehicles decided to take re-possession of all the three motor vehicles which were assisting the school. After paying Tshs. 2,600,000/=, the respondent thought that she had already fulfilled her obligation. When she was summoned in court she was told that there were two cases, that is the one for which she paid Tshs. 2,600,000/= and the present case in which she is required to pay Tshs. 5,600,000/=. She swore

that she was not aware of this case. When she was informed that the payment of Tshs. 6,580,000/= was in accordance with the order of this court given on 12th day of March, 2016, the respondent admitted and promised to pay. She asked for a two months' period within which to pay the said decretal amount of Tshs. 5, 680,000/=.

In his rejoinder, Mr. Nyanjugu Sadick told this court that the respondent had engaged advocates to represent her in those two matters; one of them being Mtata who was representing him in this case. The other case was on a claim of Tshs. 2,160,000/= in which another advocate had been engaged. Mr. Nyanjugu further told this court that the respondent knew of the case that was before the Commission for Mediation and Arbitration and was also aware that her advocate would take care of the matters. The case was determined and she paid. Then there is the present case which is Labour execution No. 81 of 2018 which owes its origin from Labour Revision No. 68 of 2016.

Mr. Nyanjugu vehemently refuted the respondent's claims that she was not aware of this case.

I have heard the personal representative of the applicant and Ms Charlotte. I have also perused the record. There is no dispute that after the



matter had been adjudged before the Commissioner for Mediation and Arbitration, it landed in this court as Revisional Application No. 68 of 2016 whereby after hearing the parties, the court dismissed the respondent's application for revision for want in merit. The decision of this court was handed down on 24<sup>th</sup> September, 2018. The applicant then filed the present Labour Execution seeking to execute the Award of the CMA. On 12<sup>th</sup> day of March, 2019, this court (Shayo, DR) made the following order:-

*'Following the application for execution made under Order XX1 rule 9 and 10 (2), the judgment debtor shall re-instate the decree holder as well as pay here salaries together with other benefits/entitlements-Tshs. 6, 680,000/= from the date of termination to re instatement as awarded by CMA.*

*Order accordingly.'*

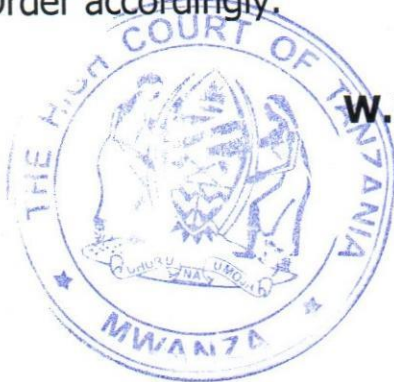
The record shows that when the application for execution was being heard and the order of reinstatement and payment of Tshs. 6, 680,000/=, the respondent was duly represented by Gladness Lema, learned Advocate. The same record indicates that on 13<sup>th</sup> day of August, 2020, this court was informed that the respondent had already paid Tshs. 1, 000,000/= out of

decreed award of Tshs 6, 680,000/=. The respondent's argument that she was not aware of this matter is unacceptable.

Now to the present application. The applicant is seeking for the detention of the respondent in prison as a civil prisoner for failure to pay that sum of 6, 680,000/=. The respondent readily responded to the notice issued to this court and has told this court that she does not dispute the amount save that she be given time in which to settle the amount. She prayed for two months' period to pay the amount of Tshs. 5, 680,000/= less Tshs. 1,000,000/=. The applicant has not resisted the prayer.

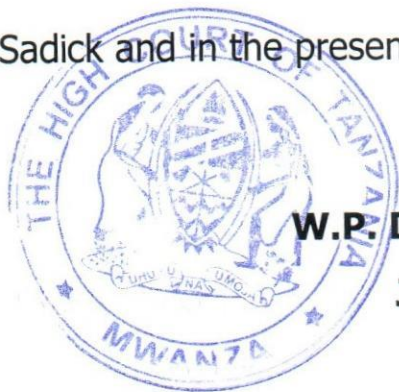
Invoking the provisions of section 44 read together with rule 39 of Order XXI both of the Civil Procedure Code [Cap 33 R.E.2019], I disallow the application for arrest and detention of the respondent and order the respondent to pay to the applicant the sum of Tshs. 5, 680,000/=. The amount should be paid by 30<sup>th</sup> June, 2022.

Order accordingly.



  
**W.P. Dyansobera**  
**Judge**  
**5.4.2022**

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 4<sup>th</sup> day of April, 2022 in the presence of the applicant and Mr. Nyanjugu Sadick and in the presence of the respondent Charlotte Mbabazi.



**W.P. Dyansobera**  
**Judge**