IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT ARUSHA

REFERENCE NO. 01 OF 2022

(C/F Reference Application No. 1 of 2022, Execution No. 86 of 2021)

MANTIS LIMITED.....APPLICANT

VERSUS

ALLAN VAN HEERDEN.....RESPONDENT

RULING

17.08.2022 & 21.09.2022

MWASEBA, J.

The applicant, **Mantis Limited**, having been dissatisfied with a ruling of the Deputy Registrar allowing the attachment and sale of the applicant's properties worth Tshs. 72, 700, 000/= in case the judgment debtor fails to pay the stated amount, lodged the present reference moving this Court to interfere and vary the said decision of Deputy Registrar.

The application is supported by an affidavit sworn by Mr Kapimpiti Mgalula, learned counsel for the applicant and it was objected by the respondent who filed counter affidavit sworn by the respondent himself.

In brief, the respondent filed a dispute at CMA claiming for unfair termination after being terminated by the applicant unfairly. At the end of the trial, it was decided in favour of the respondent herein and the applicant was ordered to pay the respondent Tshs. 16,599,000/= as salary arrears for January, February and March and Tshs. 11,066,000/= in lieu of two months' Notice to be complied within 30 days. The same was duly paid by the applicant to the respondent. Dissatisfied with the said award, the respondent preferred a revision to this court via Revision Application No. 110 of 2018 where at the end of the hearing the court allowed the application and on top of what was already paid by the applicant to the respondent, he was ordered to pay Tshs. 38,731,000/= and USD 15,000.00 being seven months' salary and repatriation costs.

Thereafter the respondent filed Execution No. 106 of 2021 in order to execute the said award of the High Court by attaching the applicant's properties worth Tshs. 72,000,000/= after converting USD 15,000 to Tshs as per exchange rate of Tshs. 2300 for 1 USD and the application was granted. Being aggrieved with the ruling of the Deputy Registrar allowing the amount of Tshs. 72, 700,000/= which was not awarded by the High court, the applicant preferred the present application for the court to

intervene and vary the said decision allowing the respondent's execution for being illegal and unfounded.

When the application was called for hearing, the applicant enjoyed the legal services of Mr Kapimpiti Mgalula, learned advocate while the respondent was represented by Mr Alute S. Mughwai, learned advocate. The application was heard by way of written submission.

Supporting the application, Mr Mgalula submitted that Hon. Masara J in Revision No. 110 of 2018 did not order for the amount of Tshs, 72,700,000/= nor made any conversion of currency from USD to Tsh, thus the Deputy Registrar was supposed to execute what was awarded by the court and not unlawfully allow computation of money as they were not blessed in the decree. He supported his argument with the case of **Hubert Lyatuu Vs Tanesco**, Revision No. 90 of 2018 (HC Mwanza-Unreported) and **Shannon Mathew Brunsdon & 2 Others vs Totality Wild Safaris Co. Ltd**, Civil Revision No. 02 of 2020 (HC Arusha-Unreported).

Responding to what was submitted by the counsel for the applicant, Mr Mughwai argued that the conversion of currencies to reach the amount of Tshs 72,700,000/= was not illegal. It was due to the fact that the auction and sale of the said properties in satisfaction of money decreed will

necessary be in local currency as described in the scheduled list. The valuation was done to show that the properties attached worth within the decreed amount and not beyond and the computation was not excessive as alleged. He added further that as per **Rule 6 of the Court brokers and Process Servers (Appointment, Remuneration and Discipline) Rules**, GN 299 of 2000 execution officer is required to submit before the court an inventory showing the property intended to be attached and its value, that's why each item was valued. Thus, there is nothing to reverse, vary or correct the decision of Hon. Deputy Registrar and the application should be dismissed.

Having considered the rival submissions made by the parties and the record the issue for determination is whether the application for reference has merit.

Having gone through the records of the present application, the executing court was executing the following order of the High Court that:

> " ..... *The Respondent, in addition to the amount he has already paid to the Applicant, is ordered to pay to the applicant Tshs 38,731,000/= (Say thirty-eight million, seven hundred thirty-one shillings only) plus USD 15,000.00, being seven months' salary and the repatriation costs of the Applicant...."*

Looking at the above decree of the court it is obvious that it was an order for payment of money. The modes of execution of the decree for payment of money is specified under **Order XXI Rule 28 of the Civil Procedure Code**, Cap 33 R.E 2022 which stipulates that:

> *"Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention as a civil prisoner of the judgment debtor or by the attachment and sale of his property, or by both."*

Therefore, the law gives the modes of executing the decree for payment of money that it can be executed by detention as a civil prisoner or by attachment and sale of the judgment debtors' properties. This is what transpires in Execution No. 106 of 2021 whereby the respondent prayed for attachment of properties worth Tshs 72,000,000/= and the Deputy Registrar allowed the application and ordered the attachment and sale of the properties worth Tshs 72,700,000/= in case the applicant failed to pay the decreed amount.

The order of the Deputy registrar is very clear that the said properties should be attached and be sold in case the judgment debtor will default to pay the decreed amount. I do not see any contravention there as alleged by the counsel for the applicant. The amount decreed is very clear

that it is Tshs 38,731,000 plus USD 15,000,000. So, I concur with a senior learned counsel Mughwai that computing it to the value of properties attached is not illegal. But it is a legal requirement as one is not allowed to attach the properties which its value is excessive to what he is claiming. The amount attached should not be more than five per centum of the value of the decree. This is provided under **Rule 23 (1) of the Court Broker and Process server (Appointment remuneration and disciplinary) Rules**, GN 363 of 2017 which stipulates that:

> *"The executing officer shall not, unless ordered by the court, attach property with a market value which exceeds the value of the decree plus the execution expenses permitted under these Rules by more than five per centum."*

Looking at the above provision, computation of the value of attached properties is inevitable in order to comply with the legal requirement fore stated. The counsel for the applicant complained that even the value of the properties attached is excessive and alleged that the amount of Tshs. 72,700,000/= was not awarded anywhere. With due respect, I wish to differ with him. The decree is clear as to the amount which was ordered to be paid. Tshs 38, 731,000/= plus USD 15,000,000 there is no way that the value of the attached properties of Tshs 72,700,000 is excessive. It is within the legal requirement.

From the fore going, I am of the firm view that the Deputy Registrar executed what was ordered in a decree by being guided with the modes of execution of the decree for payment of money. The computation of the said properties was a process for execution due to the fact that properties cannot be attached blindly without knowing or disclosing its value.

For the above reasons, I do not find any merit in this application and therefore it is dismissed. The decision of the deputy registrar is hereby left undisturbed. No order as to costs.

It is so ordered.

DATED at **ARUSHA** this 21st day of September 2022.

N.R. MWASEBA

JUDGE

21/09/2022