

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**MISC. LABOUR APPLICATION NO. 16 OF 2021**

*(Arising from Misc. Labour Application No.49 of 2020 originating from Execution No.59 of 2019)*

**FAIDA HASSAN POTEA.....APPELANT**

**VERSUS**

**FOUR SEASON SAFARI LODGE SERENGETI ..... 1<sup>st</sup> RESPONDENT**

**KASSANGA H. KASSANGA T/A ROCK CITY TAKERS LTD ....2<sup>nd</sup> RESPONDENT**

**RULING**

*12<sup>th</sup> August & 5<sup>th</sup> October, 2022.*

**ITEMBA, J.**

In this application the applicant is moving the court to exercise its powers and make correction on the clerical errors appearing in the ruling delivered by Hon. Mashauri J on 28<sup>th</sup> April 2021. The court is moved under sections 96 of the Civil Procedure Code, Cap 33 [R.E 2019], Rule 24(11), (b)(c), 25(1), (2), (a)(b) and 55(1) of the Labour Court Rules, G.N 106 of 2007.

Facts which led to this application albeit brief are as follows; the applicant had filed a labour dispute claiming unfair termination before the

Commission for Mediation and Arbitration (CMA). It was decided that the applicant's termination was unlawful, and he be reinstated and that he should be paid remuneration from the date of termination to the date when the award was issued which was a period of seven (7) months. The CMA findings were that the applicant should be paid a total of TZS **9,414,756.89** as he was receiving a salary of TZS **1,344,965.27** per month.

The respondent was dissatisfied and appealed before this court (Hon. Madeha, J). On 29<sup>th</sup> May 2020 the ruling was issued. The CMA decision was maintained to the extent that the applicant's termination was unlawful, that he should be reinstated and be paid the salary of 7 months but the salary calculations were varied from TZS **1,344,965.27** to TZS **500,000** per month.

Following that decision, the respondent made an agreement with the applicant that instead of reinstatement, they will pay the applicant all his dues and compensation of 32 months which totaled to TZS 16,000,000 minus all statutory deductions, at the rate of TZS 500,000 per month. The applicant received the money in his bank account on 19<sup>th</sup> August 2020.

Sometimes later, the applicant served the respondent with a warrant of attachment in execution of decree of money attaching her 2 vehicles. The said execution proceedings were conducted *ex-parte*. The respondent applied for this court to lift the warrant of attachment and to order the applicant to refund the respondent TZS 3,377,544/= paid into the 2<sup>nd</sup> respondent's bank account. This court (Hon. Mashauri,J) granted the application for lifting warrant attachment and ordered the applicant to refund the respondent TZS. 3,377,544/= paid in to the FNB bank account. In his ruling, he stated that the applicant salary was TZS 584,000 and not TZS 500,000. The applicant seeing that the said ruling by Hon. Mashauri J, contains clerical errors, filed this application with one prayer thus:

- (i) *That the court to exercise its powers and make correction on the clerical errors appearing in the ruling delivered by this court before Hon. Mashauri, J on 28<sup>th</sup> day of April, 2021.*

Hearing of the application took the form of oral submissions. Appearing for the applicant, was Mr. Salehe Nassoro, learned counsel while the respondent was represented by Mr. Malick Hamza, learned advocate.

In general, the counsel for the applicant submitted that he prays for correction of the High Court ruling by Hon. Mashauri J, because it

comprises clerical error. He added that this court after correctly deciding that the monthly salary of the applicant herein was TZS 584,000 per month and not TZS 500,000, it made a clerical error of ordering the applicant to refund TZS 3,377,544 to the 1<sup>st</sup> respondent. And, that is why they filed this application moving the court to correct the said error.

The respondent's counsel opposed the application stating that it is misconceived. That page 4 paragraph 3 of the judgment issued by Hon. Madeha J, states "the respondent was paid Tshs 500,000/= and not 1.3 per month" and that was the findings of the Court. That, the judgment of Hon. Mashauri, J in application no. 49/2020 had a different opinion that the salary was TZS. 584,220 and not TZS 500,000/= as found by Hon. Madeha, J. To him, this was an issue which needed to be determined.

He insisted that, the decision by Hon. Mashauri was not a clerical error but the findings of the court and the proper way to challenge the same is by way of review, revision or appeal. And that, the only way to challenge such judgment was by filing an appeal to the Court of Appeal, as so far there is no appeal by either party, the decision of Hon. Madeha remains final and conclusive.

He finalized his submissions by stating that the Act of Hon. Mashauri to correct the decision of Hon. Madeha J, implies that he rectified the High Court decision which is on concurrent jurisdiction. And that, Hon. Mashauri, J was *functus officio* to rectify the amount. In this, he referred to the Court of Appeal decisions in **Mohamed Enterprises V Masoud Mohamed Nasser Civil App. No. 3/2012** and **Ly Rice C. Comp Ltd V Principal Secretary Ministry of Finance [2002] TLR 389**.

In rejoinder, the applicant submitted that they are not contesting either of the applications in Revision no.74/2019 and no 49.2020 but they rely on section 97 of the CPC to move the court to rectify errors. He stressed that Hon. Mashauri, J did not correct Hon. Madeha J, as Hon. Madeha stated that the amount should be according to salary level, and Hon. Mashauri's decision was based on the applicant's salary slip attached in affidavit. And, according to the salary slip the amount was TZS 584,220.

Having appreciated the submissions by the parties, the first issue to be answered is whether this court has jurisdiction to determine this application.

Section 96 of the Civil Procedure Code (*supra*) provides as follows:

*'Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the court either of its own motion or on the application of any of the parties'*

Looking at the High Court decision in Labour Revision no. 74 of 2019, the order is very clear that the applicant be paid compensation at the rate of TZS 500,000/= per month. The respondent filed Miscellaneous Labour application no. 49 of 2020, for lifting the warrant of attachment in labour execution no. 59 of 2019 in respect of the respondent's movable properties and refund to the respondent of TZS 3,377,544 paid to the 2<sup>nd</sup> respondent. Then the High court came up with the new amount to be compensated to the applicant which is TZS 583,220. As correctly mentioned by the counsel for the respondent these are two different findings of the court, it is not a clerical error. At page 5 of the Ruling in Miscellaneous Labour application no. 49 of 2020, the Judge raised an issue there, of *'whether the applicant was correctly paid by the 1<sup>st</sup> respondent in compensation of 12 months' salary upon deduction of all statutory deductions'* and upon responding to this issue, he traced the evidence found in the applicant's salary slip and email correspondences between the parties and concluded that the correct amount to be paid to the applicant

is TZS 584,220. I will quote page 6 that part of ruling for ease of reference:

*'The answer to this issue is found in the salary slip of the respondent Faida Hassan Potea annexed to the counter affidavit marked annexure F HP' I" the basic salary of the respondent was Tshs. 584,220/= and not 500,000/='*

On this basis, I find that what is contained in the High Court ruling by Hon. Mashauri, J, amounts to court's findings. That, it is way beyond a clerical error provided under section 97 of the CPC, it is more than an accidental slip or omission.

It is trite law that when a court finally disposes of a matter, it seizes to have jurisdiction over it. The application of this principle was emphasized in the case of **Tanzania Telecommunication Company Limited and Others Vs. TriTelecommunications Tanzania Limited** [2006] I EA 393. Also, in the case of **Maria Chrysostom Lwekamwa Vs Placid Richard Lwekamwa & Another**, Civil Application No. 549/17 of 2019 at TZCA 563. Further, the Judges or magistrates of that court become '*functus officio*' in so far that matter is concerned. See also **Mohamed Enterprises (T) Limited v Masoud Mohamed Nasser** (supra) as cited by the respondent. Therefore, judges and magistrates cannot reopen the


case which is already finalized in the same court. Having stated that, it is obviously that the applicant misled himself by filing this application in this court to challenge the court's findings. The proper avenue was to file an appeal before the appellate court. Indeed, as stated above, with the existence of an order from Hon. Mashauri, J decision, there was no need for another Judge to decide on the same issue. In consequence, this application is non meritorious and it is hereby dismissed.

Costs to be borne by the appellant.

It is so ordered.

DATED at **MWANZA** this 5<sup>th</sup> day of October, 2022.



  
**L. J ITEMBA**  
**JUDGE**  
**5/10/2022**

Ruling delivered in the presence of the applicant and in the absence of the respondents.

  
  
**L. J ITEMBA**  
**JUDGE**  
**5/10/2022**