

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT MUSOMA

LABOUR APPLICATION NO 13 OF 2022

(Arising from Application for Excution No 42 of 2021, Originating from Labour
Dispute No CMA/MUS/115/2021)

CYPRIAN VITALIS 1ST DECREE HOLDER

PENDAEL SIMON 2ND DECREE HOLDER

RODRICK FIKIRI KAKOMANGA 3RD DECREE HOLDER

VERSUS

EPROD MINING SERVICES (T) LTD 1ST JUDGMENT DEBTOR

EVODIUS PIUS MINZANI 2ND JUDGMENT DEBTOR

EDGAR LAUREAN MUSHUGA 3RD JUDGMENT DEBTOR

FRANCIS PETER TIBAIJUKA 4TH JUDGMENT DEBTOR

YONA MCHOME MNANDI 5TH JUDGMENT DEBTOR

RULING

27th October & 04th November 2022

F. H. Mahimbali, J.

The applicants in this application are decree holders in Labour dispute with Ref No. CMA/MUS/115/2021 in which decreed that the decree holders be paid a total amount of 10,500,000/=. That efforts to

get satisfaction of the said award by the CMA proved futile as the judgment Debtor Eprod Mining services (T) Ltd failed to settle any. That as they have not been able to trace any known company's property, have sought as a means of last resort to apply for lifting up the corporate veil of the respondent company so that its directors are personally held liable to settle the said sum or be detained as civil prisoners.

The application is thus filed under section 38 (1), 42 (c) and (e), 44 (1), 68 (e) and order XXI Rule 9, 10 (j) (iii) (c), 28, 35 (i) and (2), 36, 39(2) (d) of the Civil Procedure code, Cap 33 R. E. 2019.

Relying in the affidavit dully sworn by their advocate Davis Kaijambo Musahula, in which it was prayed to be adopted by the court in support of their application, I have had sufficient moment to digest it. The same is reproduced for easy of reference:

- 2. That the applicants emerged successful in labour Dispute No CMA/MUS/115/2021 to which the 1st respondent admitted to the Applicants' claims and pledged to settle the applicant's claimed sum to the tune of 10,500,000/= Tshs by 30/10/2021 which has not been done to date.*
- 3. That ever since, the 1st Respondent has neglected to whole of the decretal sum despite several request and attempts from the Applicants.*

4. *That the applicants conducted an official search to the Registrar of Business Registration and licensing authority (BRELA) in search of any properties belonging to the 1st respondent only to be informed that the respondent has no any property registered in its name on which attachment could be affected. A copy of the search report is hereby attached and marked as annexure DMV "A" to form part of this affidavit.*
5. *That in attempt to enjoy their decree, the Applicants lodged an application for execution by way of arrest and detention of the 2nd respondent who is the managing Director of the 1st respondent. A copy of the application for execution is hereby attached and marked as annexure DMV "B" to form part of this affidavit.*
6. *Therefore, the Applicants have made all the attempts to execute and enjoy their award but in vain and the same is the result of the respondent's neglectful act to honour their legal obligation as per the agreement as per the agreement and award of the CMA.*
7. *More so, the 2nd, 3^d, 4th and 5th respondents being shareholders and directors of the respondent, they have neglected to take necessary steps to settle the decretal sum despite being aware of the applicants' claim.*
8. *Furthermore, it is of paramount important for the veil of incorporation to be lifted against the 2nd, 3^d, 4th and 5th respondent to settle the decretal sum short of which the Applicants will be left with an empty decree of same are shielded behind the veil of incorporation hence rendering the all done process of the law an academic exercise and it will not serve the interest of justice.*

The applicants appeared in person during the hearing of their application despite their chamber summons and affidavit being drafted and deposed by Mr. David Kaijambo Muzahula learned advocate. The respondents on the other hand were under the legal representation of Mr. Majid Kangile learned advocate, opposed the application and raised preliminary objection. However, on the date set for the hearing of the said preliminary objection neither the respondent nor their advocate made appearance in court consequently, the registered preliminary objection was dismissed and then hearing of the application *ex parte*.

In their submission in support of the application, the applicants reiterated what is deposed in the affidavit in support of the application that the 1st respondent is reluctant to settle the decree. As they have no other means left to enjoy their decree/award by the CMA, as by means of last resort, they think this mode of arrest and detention of the 1st, 2nd, 3rd and 4th respondents will yield fruits in compelling the Judgment Debtor to settle the same. As for that, they are thinking of the orders of this court that first the corporate veil of the 1st respondents be lifted so as to arrest the directors of the first respondent (judgment Debtors).

Having heard the submissions from applicants, it is now the Court's turn to determine this application as per law.

In a nutshell I agree with the applicants that this application is meritorious. The facts deposed by the applicants' counsel have been established. The necessary material facts which needed proof are: One, whether the said 2nd to 5th respondents are connected with EPROD MINING SERVICES (T) LTD (The Judgment Debtor). Two, whether the said EPROD MINING SERVICES (T) LTD has no Company assets. Three, whether EPROD MINING SERVICES (T) LTD has failed to discharge the said decretal sum as alleged?

In my considered view, it is the pleasure of the Court that Decree Holders enjoy the Court's award. In law, there are various legal means provided by law for one to enforce Court's award. Nevertheless, resorting to the arrest and detention mode is not the party's choice but as a matter of legal practice it is a legal means of last resort. And before invoking to that mode, there must be clear attempts done by the Decree Holders in enforcing the said award by other means legally provided but in vain. For one to resort to the last mode of enforcement, as provided in the case of **Yusufu Manji V. Edward Masanja and Abdalah**

Juma, Civil Appeal No. 789 of 2002 (CAT – at DSM unreported) there must be proof by affidavit that the relationship between the said Director/Partner or shareholder and the legal entity, that the decretal sum has not been fully settled, that there are efforts to conceal the properties of the said company. In the present case, all these have been established plus compliance to Rule 9 and Rule 42 (7) of the Labour Court Rules of 2007.

That said, the application is merited as being filed in compliance with the law. The same is hereby granted as emanates from the binding decision between the employer and the employee. Thus, the corporate veil of the company (Judgment debtor) is hereby lifted. Consequently, I order arrest and detention of the Company directors namely: EVODIUS PIUS MINZANI, EDGAR LAUREAN MUSHUGA, FRANCIS PETER TIBAIJUKA, YONA MCHOME MNANDI as civil prisoners unless the decretal sum is paid and satisfied to the satisfaction of the CMA's award. I thus under XXI Rule 36 of the CPC, Cap 33 R.E 2019, direct the Regional Police Commander of Mara to effect the arrest of the mentioned directors and handover to this Court for committing them to prison as civil prisoners.

I have ruled so, after the hearing of the application exparte and upon wilful neglect of the respondents' appearance before the Court despite being dully informed so.

DATED at MUSOMA this 4th day of November, 2022.




F.H. Mahimbali

Judge

Court: Ruling delivered this 4th day of November, 2022 in the presence of the applicants, Mr. Gidion Mugo, RMA and respondent is being absent.


F.H. Mahimbali

Judge