

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

**TANGA DISTRICT REGISTRY**

**AT TANGA**

**LABOUR REVISION NO. 34 OF 2020**

*(ARISING FROM EXECUTION NO 10 OF 2020)*

**NATIONAL MICROFINANCE BANK PLC.....APPLICANT**

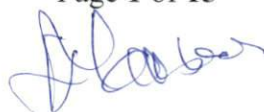
***VERSUS***

**VICTOR MODESTA BANDA.....RESPONDENT**

**JUDGEMENT**

31<sup>ST</sup> MAY 2022  
L. MANSOOR, J

Victor Modest Banda, the respondent herein, was awarded Tshs 24,000,000 under section 40 (3) of the Employment and Labour Relations Act as 12 months salary as compensation for unfair termination of his employment. This Award was given by the CMA on 07<sup>th</sup> July 2014 by the Arbitrator, Hon. Kayugwa Haji in Complaint or Labour Dispute No. TAN/CMA/123/2013. The Applicant, herein referred to as the Bank was aggrieved, and had applied for Revision before the High Court, Revision No. 16 of 2015, the application for Revision was dismissed on



16/06/2017, Mipawa J, (as he then was), for it lacked Merits. The Applicant filed the second Appeal before the Court of Appeal, Civil Appeal No. 29 of 2018, the Court of Appeal upheld the decision of CMA on 24<sup>th</sup> February 2020.

After the decision of the Court of Appeal, the respondent herein applied for execution of the CMA's Award, it was Application No. 10 of 2020. The application for execution was made under Order XXI, Rule 9, 10 (2) and 11 of the Civil Procedure Code, Cap 33 R: E 2002. The Applicant told the District Registrar that it had already satisfied the Award by depositing the sum of Tshs 24,000,000 into the account of the respondent since 5<sup>th</sup> May 2020, but the money was used to offset the outstanding loan of the respondent within the bank. The Deputy Registrar, Kabwe F. J, gave a Ruling on 2<sup>nd</sup> October 2020 that the Award was not satisfied, and he ordered the Applicant to satisfy the Award, which is Tshs 24,000,000 being 12 months salaries, severance payments and repatriation expenses, within 30 days from 2<sup>nd</sup> October 2020.

Aggrieved by the decision of the Deputy Registrar in execution proceedings, the Applicant filed an application for Revision under section 94 (1) (c) of the Employment and Labour Relations Act, Cap 366 R:E 2019, section 51 of the Labour Institutions Act, Cap 300 R:E 2002, Rule 24 1), (2), (3) and (11), and Rule 28 (1, and rule 55 (1) and (2) of the Labour Court Rules, GN. 106 of 2007, requiring the Court to call for the records and examine the execution proceedings No. 10 of 2020, revise them and set aside the order of Honourable Francis Kabwe, DR, dated 1<sup>st</sup> October, 2020.

Wondering whether the execution proceedings and orders are revisable, I asked the Counsels for the parties to address the Court, Counsel Antipas Lakamu for the Applicant said the High Court, Labour Division has the power to revise the proceedings of the Registrar in execution proceedings, and the power and jurisdiction is conferred under Rule 55 (1) and (2) of the Labour Court Rules. The rationale is that when the Registrar is exercising execution powers under rule 49, the

Registrars is not sitting as the High Court acting in its original jurisdiction rather it is the Registrar of the High Court performing statutory functions under section 54 of the Labour Institutions Act, as amended by Act No. 3 of 2020.

The Counsel referred to the case of **China Communication Construction Co. Limited vs Boaz Matiba and 298 others, Labour Court Digest of 2015, Case No. 149**, also the case of **DAWASCO vs Wilson Chacha, High Court Labour Digest of 2015, Cas No. 181**, also the case of **Dotto Michael Kahabi vs Seet Peng Swee and Total Tanzania Limited, Labour Revision No. 424 of 2020**, in which it was stated that the decision of the Deputy Registrars in execution proceedings is a revisable order.

The Counsel also cited the case of **NMB BANK LC, VS SARAH RICHARD HAMZA, Labour Revision No. 85 of 2019**, where the High Court revised the decision of the Deputy Registrars.

Mr Henry Mlang'a submitted that the orders passed by the Deputy Registrars of the High Court are the orders of the High Court , and so those orders cannot be revised by the High Court, The High Court cannot revise its own orders, and if the applicant was not satisfied by the orders passed by the High Court through the Deputy Registrars, he was supposed to prefer an appeal or revision before the Court of Appeal. He said, assuming the orders passed by the Deputy Registrars were revisable by the High as suggested by the Counsel for the Applicant, the order which is the subject of the revision is not revisable since it did not conclude the rights of the parties, as execution proceedings were not closed, and still continuing before the Deputy Registrar.

I heard the submissions of the parties, and it is quite clear that the application for execution was made under Order XX1 Rule 9, 10 and 11 of the Civil Procedure Code, as the Labour Laws or even the Rules, albeit many, do not have a separate ways or procedure for executing the Labour Awards issued by the CMA. The procedure for execution of Labour Courts

Awards is the same as execution of any other Decree passed in Civil Proceedings, thus, only the Code of Civil Procedure order XX1, starting from Rule 1 to Rule 101 would apply. The issue before the Registrar was execution, and what was brought before him was an application for execution. The Judgement Debtor said, he satisfied the execution, while the Judgement Creditor said the decree was not satisfied. This issue ought to have been decided by the High Court, Labour Division in an application under section 38 of the Civil Procedure Code, Cap 33 R: E 2019, which provides:

- (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives and relating to the execution, discharge, or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.
- (2) The 'Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under

this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional Court-fees.

The judgement debtor who claims that he has already discharged the decree should have made an application under section 38 of the Civil Procedure Code by chamber summons accompanied with an affidavit, and the application should have been determined by the Judge. The application under section 38 of the CPC is treated as a suit, and thus its orders are appealable or revisable by the Court of Appeal. The orders passed under section 38 has the force of a Decree, the appeals from orders which had the force of a decree by virtue of section 38, which gave right to a Court to treat a proceeding under section 38 as a suit or a suit as a proceeding and to realize Court-fee, clearly shows that the decree is appealable or revisable only by a superior court.

It will also be apposite to notice that the decree in the suit has already been passed which is under execution and a

controversy has been raised in the execution stage. The party who entertains any question regarding the execution or satisfaction or discharge of a decrees is required to file an application under section 38 in relation to execution, discharge, and satisfaction of the decree. An order passed on such an application can again be another decree passed in the same suit and thereby giving a right to appeal to a party.

It is quite clear that in the cases cited by the Learned Counsel for the Applicant that the learned Judges of the High Court have taken up a position that the execution orders in labor matters passed by the Deputy Registrar exercising execution proceedings are revisable by the High Court, the facts of the cases in those cases are distinguishable, but again the issue in **Finca Microfinance Bank vs Vedastus Chundu, HC Shinyanga in Revision No. 23 of 2020** was whether the Registrars of the High Court had jurisdiction to carry out the execution proceedings of the CMA, and it was held that he has such powers as conferred by 54 of the Labor Institutions Act, and Order XLIII of the Civil Procedure Code. The issue here is



whether the execution proceedings are revisable or appealable. In any case, the authorities cited are not binding upon this Court.

The Deputy Registrars' powers are given under Order XLIII of the Civil Procedure Code, which provides:

1. Subject to any general or special direction of the Chief Justice, the following powers may be exercised by the Registrar or any Deputy or District Registrar of the High Court in any proceeding before the High Court-
  - (a) to appoint and extend the time for filing the written statement of defense, to give leave to file a reply thereto and to appoint and extend the time for filing such reply under Order VIII, rule 1, 11, and 13.
  - (b) to order that a suit be dismissed under Order IX, rules 2, 3 and

- (c) to make an order or give judgment on admissions under order XII, rule 4.
- (d) to sign decrees under Order XX, rule 7.
- (e) to admit, reject or allow the amendment of an application for execution of a decree under Order XXI, rule 15.
- (f) to issue notice under Order XXI, rule 20; 186
- (g) to order that a decree be executed under Order XXI, rule 21.
- (h) to issue process for execution of a decree under Order XXI, rule 22.
- (I) to stay execution, restore property, discharge judgment debtors and require and take security under Order XXI, rule 24.

- (j) if there is no judge at the place of registry, to issue a notice to show cause and to issue a warrant of arrest under Order XXI, rule 35.
- (k) if there is no judge at the place of registry, to order attendance, examination and production under Order XXI, rule 40; and
- (l) to order that an agreement, compromise, or satisfaction be recorded under Order XXIII, rule 3.

It follows therefore, the Deputy Registrars of the High Court, be it a Labor Division or any other registry do not have powers to entertain an application regarding the questions of whether the decree was fully discharged or satisfied. Such powers are reserved to the High Court before a Judge. The Deputy Registrars can only discharge the judgement debtors if there is no controversy as to whether the decree was fully satisfied or not.

The Counsel for the Applicant says the power of Revision is given under rule 55 of the Labor Court Rules but this Rule only confers powers to the High court to execute the Awards passed by the CMA. Again, under section 91 of the Employment and Labor Relations Act, the High Court is empowered to revise the Awards passed by the CMA. The execution of the Awards is carried out by the High Court and the law applicable in execution is the Civil Procedure Code.

The key word is "*the satisfaction of the decree*". The Deputy Registrars or even the executing court was not given powers to vary the terms of the decree already passed or to substitute in its place another decree embodying the compromise or an offsetting of a decree. The order to offset the decree by the Judgement Debtor ought to have been given in the Decree itself under Order XX Rule 19 of the CPC which provides:

Order XX Rule 19. -(1) Where the defendant has been allowed a set-off against a claim of the plaintiff, the decree shall state what amount is due to

the plaintiff and what amount is due to the defendant and shall be for the recovery of any sum which appears to be due to either party. (2) Any decree passed in a suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed.

In the decree or Award passed by the CMA there is no order of setting off the decree passed by the CMA to enable the Judgment Debtor to automatically set off the decree.

Section 38 is the only section that deals with the jurisdiction of an executing court. It is confined to determining all questions arising between the parties to the suit and relating to the execution, discharge or satisfaction of the decree. It enjoins that all these questions shall be determined by the executing court and not by a separate suit. All other questions can be

determined by a separate suit. Any question that does not relate to the execution, discharge or satisfaction of the decree is thus not within the jurisdiction of the executing court."

**Maharaj Kumar Mahmud Hasan Khan vs Moti Lal Banker on 7 July 1960, Equivalent citations: AIR 1961 All 1.**

The issue whether the Decree holder, the respondent herein has an outstanding debt with the bank is not an issue decided by the CMA and was never part of the decree. The issue of whether the respondent borrowed money from the Bank is a different matter altogether and creates a different liability to the respondent not the one decreed by CMA, and thus the offsetting being not a decree of the court cannot be executed by the executing court simultaneously with the original decree. For the reasons given herein above, the High Court Labor Division cannot revise the orders passed by the Deputy Registrars. The orders passed by the Registrars in Execution No. 10 by Honorable Kabwe remains undisturbed. The

Applicant is duty bound to satisfy the decree passed and must be executed without any variations.

In the upshot this application is incompetent before this Court, and it is hereby dismissed.

DATED AND DELIVERED AT TANGA THIS 31<sup>ST</sup> DAY OF MAY  
2022



*Latifa Mansoor*  
**LATIFA MANSOOR**  
**JUDGE**  
**31<sup>ST</sup> MAY 2022**