

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

CIVIL APPEAL NO. 121 OF 2021

MALIGISA MANYANGU APPELLANT

VERSUS

THE NATIONAL INSURANCE CORPORATION (T) LIMITED 1st RESPONDENT

THE ATTORNEY GENERAL 2nd RESPONDENT

(Arising from Execution No. 8 of 2010 of the District Court of Ilala and the decision of the Minister for Labour, originating from Labour Kumb. Na. KZ/U.10/RF/8635 dated 26th

August 2002)

RULING

Date: 03/04 & 12/05/2023

NKWABI, J.:

The appellant and 24 others applied for execution of the decision of the then Minister for Labour following what appears to be an award of the of the Industrial Court. The amount sought to be executed was for T.shs 322,382,671/= being house allowances and 15% of salary increment. The district Court in execution ruled that the claim by decree holders is unfounded, and the same was disallowed.

Aggrieved with the decision of the district court, the appellant has come to this Court. He has filed a memorandum of appeal under Order XXXIX Rule 1 and 4 of the Civil Procedure Code, Cap. 33 R.E. 2019. He is ultimately asking this Court to order as follows:

- a. The decision of the District Court of Ilala District be reversed.
- b. That this Court should order that the said sums of shillings 322,382,671.20 be paid to the appellants as per the breakdown lodged by the appellants.
- c. Costs to be in the cause.
- d. Any other relief this Court shall deem fit to grant.

A preliminary objection was raised by the Counsel for the 1st respondent which it has two wings as listed hereinbelow:

1. This appeal is incompetent, as it has been accompanied by a copy of ruling and drawn orders contrary to Order XXXIX rule 1 of the Civil Procedure Code, Cap. 33 R.R. 2019.
2. This appeal is bad in law as the decision appealed therein, is non-appealable pursuant to section 74 of the Civil Procedure Code Cap. 33 R.E. 2019, as the decision appealed originated from the application for execution of the decree.

Relying on the above legal points of objection, the 1st respondent urges this Court to strike out the appeal with costs. I directed the preliminary objection be disposed of by way of written submissions. Ms. Melania Lazaro, learned counsel for the 1st respondent argued in favour of the preliminary objection.

Mr. Barnaba Luguwa, learned counsel, represented the appellant and filed submission in reply against the preliminary objection. No rejoinder submission was filed.

The respondent only argued the 2nd limb of the preliminary objection stating that he had dropped the 1st leg of the preliminary objection on 19th July 2021.

On the preliminary objection, it was contended that an order arising from the execution proceedings is, by itself, not appealable, it can be challenged by applying for revision of the execution proceedings, litigate the questions relating to execution under section 38 of the CPC or make use of Order XL Rule 1 of the CPC. It was added that no appeal shall lie to the High Court from the orders of district or resident Magistrate's court and other tribunal unless the said orders fall under section 74 of Civil Procedure Code Cap. 33 R.E. 2019. It was further maintained that the order appealed herein, does not suffice to stand as appealable order pursuant to Order XL rule 1 of the Civil Procedure Code. Thus, it has to be struck out. The counsel for the respondent cited **Suzan Rose Senga v Mussa Seleman Mbwana**, Civil Appeal No. 107 of 2021 HC where it was stated that:

"In my considered view, I do not think this kind of order is appealable. The decisions of which are appealable to the High Court are provided for under section 74 (1) and Order XL of the Civil Procedure Code, Cap. 33 R.E. 2019. The enforcement order which execution by nature is not among the appealable order that fall under the above-mentioned provisions. The appellant was supposed to have challenged the decision of the juvenile court which gave rise to enforcement proceedings or rather she could have challenged the enforcement proceedings by way of revision ..."

He also referred me to case of **General Tire (E.A.) Ltd v. Amenyisa Macha & Others**, Civil Appeal No. 21 of 2003 HC (unreported) and **Felister Kifulugha v. Royal Mwalupembe**, Misc. and Appeal No. 28 of 2019 HC (unreported).

The counsel for the respondent then insisted that this appeal is bad and should be struck out with costs.

In reply submission, the counsel for the appellant argued that the appellants were dismissed from their employment. They successfully challenged their

dismissal at Ilala District Conciliation Board but on an appeal to the Minister for Labour decided the appellant and others be re-instated to work and be paid their salary arrears. That decision was sought to be challenged by way of Certiorari and Mandamus before Opiyo Judge, but the application was dismissed with costs.

Then, they sought to execute the decision of the Minister for Labour quoting amount of money sought to be paid as salary arrears and other emoluments Parties entered a consent agreement to settle part of the claim and the balance of the claim was contested in the District Court of Ilala. The district court ruled on the correct sum payable but the respondent filed a civil revision No. 17 of 2017 in the High Court which was decided by Masabo, Judge. The revision was dismissed with costs for lack of merit.

For the appellant, it was argued that the amount payable was to be determined by the District Court and the parties were free to challenge the said decision in the High Court. It was explained that they can challenge either the formula used in arriving at the said amount or the amount adjudged by Ilala District Court for the judgment debtor to be liable to pay. It was added that the parties had the duty to prove the same by bringing the evidence/breakdown in writing.

It was therefore maintained that this specie of the proceedings are not strictly the execution proceedings as envisaged by the counsel for the respondents as the Ilala District Court engaged into hearing the parties and determining the amount payable before the same is ordered to be paid. It was added that the sum was decreed by Ilala District Court and this appeal is arising from the proceeding to determine an amount due. It is therefore argued that the claim that the appellant ought to have preferred a revision is misleading.

The counsel for the appellant is also of the view that the decision on the amount payable to be reached and the decision which is being challenged is on the manner and process of execution of the same then the decisions quoted by the counsel for the respondents are relevant but in this case the dispute arose on the proceedings to establish the decretal sum in such a case the only remedy is to appeal. The decision in this case therefore cannot fall within the ambit of section 74 of the Civil Procedure Code due to the fact that the said proceedings are not execution proceedings under Order XXI of the Civil Procedure Code but they are proceedings emanating from section 28 (1) (c) of the Security of Employment Act No. of 1964. The counsel for the appellant distinguished the cited case by the counsel for the respondents

in that the appeals were challenging decisions against execution proceedings while the current one is different.

It was also submitted by the counsel for the appellant that in this case, the district court was dealing with the matter under section 38(1) of the Civil Procedure Code, Cap. 33 R.E. 2019 which provides that:

38 – (1) All questions arising between the parties to the suit in which the decree 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.

In that regard where, a party is aggrieved with the decision then the only remedy is to appeal against the decision, the counsel for the appellant pressed.

But revision, Mr. Luguwa contended, is a specie of proceedings which deal with orders which are carried in abuse of laid down procedures citing section 79 of the Civil Procedure Code which provides that:

79- (1) "The High Court may call for the record of any case which has been decided by any court subordinate to the High Court and in which no appeal lies thereto, and if such subordinate court appears:-

(a) To have exercised a jurisdiction not vested in it by law;

or

(b) To have failed to exercise a jurisdiction so vested; or

(c) To have acted in the exercise of its jurisdiction illegally or with material irregularity,

The High Court may make such order in the case as it thinks fit."

The counsel for the appellant finally prayed that the preliminary objection be dismissed and the appeal be determined on merit.

I have considerably considered the submissions of both counsel on the legal point of objection. I am convinced that the submissions by the counsel for

the appellant are misleading. In the first place, the district court when deciding on the application for execution did not issue a decree, it merely gave a ruling on an application for execution.

Again, even if there were a dispute on the decretal sum, that is the purpose of execution proceedings and the determination thereof, for instance, if a judgment debtor has already paid part of the decretal sum, it is for an executing court to determine if there is any contention on it. Even in that situation, the executing court does not issue a decree but a ruling on the application for execution. All the cited provisions of the law by the counsel for the applicant are irrelevant and do not support his line of argument. Even the submission of the counsel for the appellant in respect of section 79 of the Civil Procedure Code are, with great respect to the counsel for the appellant, misconceived and misleading. I reject it.

All the above said and done, the preliminary objection is sustained. I rule that the appellant ought to have file a revision application against the ruling and order of the district court in the execution proceedings. The appeal is therefore incompetent and is thus, struck out with costs.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 12th day of May, 2023.



A handwritten signature in blue ink, which appears to read 'J. F. Nkwabi', is positioned above the printed name.

J. F. NKWABI

JUDGE