

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT ARUSHA**

REVISION APPLICATION NO. 88 OF 2019

(C/f Execution No. 53 of 2019 Originating from CMA/ARS/MED/552/2016)

CHODAWU APPLICANT

VERSUS

NGORONGORO CONSERVATION

AREA AUTHORITY RESPONDENT

JUDGMENT

06th April & 28th April, 2023

KAMUZORA, J.

The Applicant CHODAWU being aggrieved by the award issued by the Commission for Mediation and Arbitration (CMA) brought this application under the provision of Rule 24(1), (2)(a),(b),(c),(d),(f), 24(3),(a),(b),(c),(d), 28(l),(a),(d),(e) and 55 (1) of the Labour Court Rules GN No. 106 of 2007 and section 51 of the Labour Institution Act No 7/2004. The Applicant is seeking for this court to invoke its revisional powers and call for the records of the CMA in CMA/ARS/ARS/MED/552/2016, quash and set aside the order made by the Deputy Registrar in Execution Application No. 53/2019.

The background of the matter as may be depicted from the record is such that, the Applicant and the Respondent on 20th day of October 2016 before the CMA, settled dispute between them by signing a deed of settlement. They agreed as follows: -

- 1. That, both parties to abide with the constitution engagement principle during the paramilitary scheme initiation policy.*
- 2. The Respondent still will be bound & committed to the existing CBA's and all laws applicable on the ground with no excuse.*
- 3. Before effecting/implementing a paramilitary scheme, both parties shall sign and conclude a collective bargaining agreement to that effect.*

After concluding the said settlement deed, the Applicant herein filed an application for execution seeking for court order directing the Respondent to abide by the said settlement deed. The ruling in respect of the said application was delivered on 04/10/2019 by the Deputy Registrar of the High Court. The Applicant considered that ruling improper on account that it overlooked the terms of the deed of settlement. He thus preferred this current application on three reasons as follows: -

- 1. Whether it was justifiable for a Deputy Registrar to draw conclusion that there is no need to make specific order rather than making reference to the judge of the High Court*

who is conferred with statutory power to make interpretation of the award and to give directives.

- 2. Whether with the context of item 3 to the CMA AWARD (Deed of settlement), it was legally sound to conclude that the application for execution was pre-mature and not executable at the moment.*
- 3. Whether it was justifiable for the Deputy Registrar to adjudge the issue of existence of paramilitary scheme at Respondent work place without evidence being laid before him and whether it was justifiable to take judicial notice on mere utterances made by Respondent Counsel.*

As a matter of legal representation, the Applicant enjoyed the service of Mr. Asubuhi Yoyo, learned advocate while Mr. Hans Mmbando, learned state Attorney appeared for the Respondent. Counsel for the parties agreed to argue the application by way of written submissions. The Applicant was able to file submission on time but the Respondent filed on 21/04/2023 instead of 20/04/2023 that was ordered by this court. Thus, I will only consider court record and submission by the Applicant.

Arguing in support of application Mr. Yoyo submitted for the first issue that this court has in various occasions pronounced what is within the mandate of the registrar while handling the execution process from the CMA award and what are not permissible to do. To him, the Deputy

Registrar of the High Court do not have powers to calculate or interpret the award but to enforce it the way it is. To support his argument, he cited the case of **George Mapunda and another Vs. DAWASCO**, Misc. Rev No. 1 of 2014, HC at Dar es Salaam, **Richard Julius Rukambura Vs. Tanzania Local Government Workers Union**, Labour Revision No. 55 of 2020 HC at Mwanza.

Submitting in respect of the second ground for Revision, Mr. Yoyo argued that, pursuant to item 3 of the deed of settlement the consultation was to be made before implementing paramilitary scheme. Pointing at page 5 of the ruling of the registrar Mr. Yoyo contended that the ruling was misguided because the registrar argued as if the consultation was to be made during the implementation of paramilitary scheme hence, it was the reason he concluded that the scheme was yet to be operationalized.

As for the third ground, Mr. yoyo adopted the submission in respect of the first ground and prayed that the application be allowed for the interest of justice.

After a thorough reading of the CMA record, pleadings in the present application and the submission by the counsel for the Applicant

in respect of this application, the pertinent issue is whether the revision application is of merit.

In this matter and subject to section 87(4) of the Employment and Labour Relations Act (ELRA), decision made in respect of mediation may be enforced in the labour court as a decree of a court of competent jurisdiction. It is a settled law that execution should be confined to the order of the court or award. Hence, the duty of the Deputy Registrar is to ensure that there is satisfaction of the award in a manner that has been projected in the award.

In the current application and pursuant to item 3 of the deed of settlement parties agreed that before implementing or effecting a paramilitary scheme, both parties shall sign and conclude a collective bargaining agreement to that effect. The terms of the deed of settlement between the parties entails that the Respondent was obliged prior to the effecting of any paramilitary scheme to consult the Applicant and have a collective bargaining agreement in that respect.

The execution application was preferred because the Applicant alleged that there was physical operation by the Respondent at his work place including paramilitary transformation training and induction of paramilitary scheme. In his counter affidavit the Respondent denied

such allegation and claimed that what was taking place was a normal refresher course on employment.

I agree with the conclusion by the Deputy Registrar that there was no need to make a specific order for execution. I say so because, apart from stating that there was implementation of paramilitary scheme, the Applicant did not avail sufficient information which could suggest that what was taking place at the Respondent's premises was nothing but operation associated with paramilitary transformations.

The Applicant argued that the Deputy Registrar was wrong to adjudge the issue of existence of paramilitary scheme at Respondent's work place without evidence before him. It is in record that the application for execution was filed for the same very purpose praying for assistance of the court to order the Respondent to abide by the obligation undertaken in the deed of settlement at CMA. The terms of deed of settlement are captured at page 1 of this judgment. They require among other things, parties to abide by the constitution engagement principle during the paramilitary scheme initiation policy and to sign collective bargaining agreement before effecting or implementing a paramilitary scheme.

The wording of the terms of settlement logically requires a party seeking for compliance order to show that there is a process intended for paramilitary scheme initiation policy or that the same are in place and that the process was done without considering the terms of settlement by involving the Applicant. The registrar was clear that, what was before him did not indicate if there was paramilitary scheme being implemented to which the Applicant was not aware of. It was therefore the Applicant's duty to show to the registrar if there was paramilitary scheme that was initiated and implemented without the Respondent abiding by their terms of settlement. The Applicant did not show if the refresher cause referred to by the registrar fall within the issues agreed during settlement.

On the Applicant's argument that the registrar was not justified to take judicial notice on mere utterances made by Respondent Counsel, I find is baseless. It is not reflected in the ruling of the Deputy Registrar that he did take judicial notice on anything. The registrar was clear that since there was no paramilitary scheme that was being implemented or were about to start to be implemented there was no need to make a specific order as the judgment debtor was still committed to the settlement that was entered at the CMA.

I maintain that, the Deputy Registrar was justified to state that there was no need to make a specific order. I do not agree with the Applicant's contention that the Deputy Registrar concluded that the application for execution was pre-mature and not executable at the moment. That is not the wording of the ruling of the registrar. For clarity, the ruling read:

"I have fully considered the submission by both parties in respect of this application for execution, since the counsel for the judgment debtor is saying no paramilitary scheme is being implemented and that if they were to start implementing it the decree holder will be duly notified and involved in the process, there is no need to make a specific order since the judgment debtor is still committed to the settlement that was entered into at the Commission for Mediation and Arbitration."

From the ruling of the Deputy Registrar, there is nothing suggesting that he declared the application for execution premature. I therefore agree with finding by the Deputy Registrar that there is no need to make specific order in the circumstance of this case.

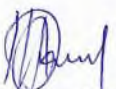
It is also not true that the Deputy Registrar adjudged the issue of existence of paramilitary scheme at Respondent work place as suggested by the Applicant. The Deputy Registrar only analysed the circumstances before him if they entail issuing any satisfaction order of

the award. As there was no proof of non-compliance to the terms of settlement, the Deputy Registrar was right in not granting the order sought.

I therefore find this application to have no merit. I proceed on dismissing the same but in considering that this revision originates from labour dispute, I make no order as to costs.

DATED at **ARUSHA** this 28th day of April, 2023.




D.C. KAMUZORA
JUDGE

