

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**THE SUB - REGISTRY OF MWANZA****AT MWANZA****CIVIL APPEAL NO. 59 OF 2022**

(Arising from RM's Msc. Application No. 26 of 2009)

NKWABI SHING'OMA LUME-----APPELLANT

VERSUS

SECRETARY GENERAL CHAMA

CHA MAPINDUZI----- RESPONDENT

JUDGEMENT

June 8th & 30th, 2023

Morris, J

The appellant, **Nkwabi Shing'oma Lume**, is dissatisfied by the ruling of the Resident Magistrates' Court of Mwanza (RMS Court) in Miscellaneous Application No. 26 of 2009 dated 12/11/2021. He has preferred this appeal. Three grounds of appeal have been raised therein. The RMS Court is faulted for allegedly having erred: while disowning its own previous ruling dated 25/02/2021; finding that the respondent managed to show cause against execution; and striking out an application for execution.



Briefly accounted, the background of this matter holds it that the dispute between parties above is labour-related. The dispute started with the applicant, employee of the respondent, being terminated from employment by the latter. He successfully challenged the termination before the Conciliation Board of Nyamagana District. The Board ordered his reinstatement. The respondent appealed to the Minister responsible for labor matters. He failed. He then challenged the said decisions further by way of judicial review before this court. Once again, he was unsuccessful. Hence, the applicant applied for execution under section 28(1) (c) of ***the Security of Employment Act***, Cap 387 R.E. 2002 (herein after the Act). The proceedings were commenced before the RMS Court.

Upon conclusion of hearing the matter, the executing court above ordered his reinstatement and payment of Tshs. 11,567,647.50 being arrears of salary from his termination to 31st March 2009. The order was not complied with. The matter was further prolonged by the next order of the same court that the respondent was at liberty to reinstate or refuse subject to payment of compensation as per section 42 (5) (d) (ii) of ***the Act***. Dissatisfied, he appealed to this Court and later to the Court of



Appeal. The last Court nullified the RMS order for want of jurisdiction. It further ordered execution proceedings to proceed.

When the matter was remitted back for execution, the applicant amended his application and applied for both reinstatement and payment of Tshs. 84,027,943.23 wages from December, 2003 to November, 2020. On 25/02/2021 the RMS Court granted the subject application as prayed. However, the order was not complied with by the respondent. Consequently, on 15/07/2021 the same court issued a certificate to the respondent for payment of Tshs. 84,027.943.23 under section 16 of ***the Government Proceedings Act***, Cap.5 R.E. 2002.

Come 19/08/2021, the applicant sought the order for *garnishee nisi* from the same court against the respondent's CRDB Bank account no. 01J1005069303. After hearing the said application, the court disowned its previous ruling dated 25/05/2021. It reasoned that there was no decision of the Board in place awarding the applicant compensation of Tshs. 84,027.943.23. The present appeal is challenging that decision.

At hearing of this appeal, the applicant was represented by Advocate Hamza Twaha while the respondent enjoyed representation from Advocate Antony Kanyama. The summary of parties' rivalry submissions

regarding the matter at hand is not difficult to account. For the applicant, it was submitted that, on 25/05/2021, the RMS court ordered the appellant to be paid Tshs 84,027,943.23 as compensation. The certificate against the respondent for such amount was accordingly issued. However, on 12/11/2021 the same court rescinded its previous order of 25/02/2021.

The appellant argued that parties were not heard in respect of the vacating of its previous decision. To him, such omission was against Article 13 (6) (a) of ***the Constitution of the United Republic of Tanzania***, Cap 2. Regarding the 2nd and 3rd grounds, it was submitted by the appellant's counsel that, the RMS court erred by holding that the respondent managed to show cause why execution should not be carried out. Further, he stated that it erred to strike out the appellant's application for execution. That there are two illegalities, *one*; no where it was shown in the record that the respondent exhibited any ground to stop execution. The only available defence was that the attached bank account did not belong to the respondent but rather the registered trustees of CCM were owners thereof. Upon analysis of such reason, the RMS court found that the said objection should have been lodged by an appropriate person (alleged trustees) not the respondent.



Two; the RMS court erred to vacate its decision of 25/02/2021 because after finding out that the respondent's ground was untamable, there was no justification for the appellant's application to be struck out. He submitted further that, in the absence of appropriate ground, the executing court erred to strike the application out. He, thus, prayed for the appeal to be allowed. Consequently, the file should be remitted back to the RMS court for issuance of *garnishee order nisi* and subsequently followed by the *garnishee absolute* for Tshs 84,023,933.23 against account no. 01J1005069303 at CRDB Bank - Lumumba Branch – Dar es Salaam which is held by the respondent.

In reply, it was submitted by the respondent that, the RMS court was justified to vacate its previous decision (25/02/2021) and give a new one (12/11/2021) after reviewing the whole issue. It was the respondent's further argument that the court observed, correctly so, that the account did not belong to the respondent but to the Registered Trustees of CCM under ***the Political Parties Act***, Cap 258 R.E 2019.

To him, section 21 (1) & (2) thereof, provides that each political party should have the duly registered trustees under ***the Trustees Incorporation Act***, Cap 318 R. E. 2019. Read together with section 8

Cap 318 and section 21 (2) of **Cap 258** all property of political party is in the hands of the registered trustees who have the status of legal corporate with capacity of suing and being sued. The respondent argued further that, the CCM trustees have never been heard in both the trial and execution proceedings. Hence, their right of being heard was breached.

Regarding the other ground of appeal, Mr. Kanyama submitted further that, the executing court was proper to strike out the application because the Court of Appeal had ordered it to execute the decree of the Conciliation Board (dated 23/3/2009 whose amount was 11,567,677.50). when the Resident Magistrate determined the application for execution it calculated the compensation amount upward to Tshs 84,023,933.23 as presented by the appellant-applicant.

To the respondent, in essence, the RMS court's role was to execute the Board's decree not to recalculate the applicable amount. So, it was right to vacate its previous order due to the court of appeal's decision. Further, to the respondent, it was right for the executing court to strike out the application for it was procured illegally. Naturally, the respondent's counsel prayed for dismissed of the appeal with costs.



In rejoinder, it was submitted that, the submissions by the respondent's counsel relates to the background of the matter; hence irrelevant/unfocused to this appeal. The appellant argued further that, matters such as competency of suit are not part of this appeal. He concluded by stating that failure to address matters raised in the submissions in chief is tantamount to not contesting the appeal.

After considering the submissions of both parties, it now upon this court to determine filed grounds of appeal. In the first ground of appeal, the appellant is faulting the RMS court to disown its previous ruling and deciding the matter on issue raised by it *suo motu* without affording the parties their right of being heard. For the respondent, the RMS court was correct as it considered that the appellant was never awarded 84,023,933.23 rather the Conciliation Board awarded him 11,567,677.50. Further, the appellant prayed to attach the bank account not belonging to the respondent rather to the trustees of CCM who were not party to previous proceedings.

As narrated herein above the RMS court previously ordered payment of Tshs. 84,027,943.23 as wages from December, 2003 to November 2020. However, later on 12/11/2021; it took a U-turn and held that no



decree of Tshs. 84,027,943.23 was in place in favor of the appellant. For that issue parties were not afforded right to be heard on such aspect.

It is a cardinal principle of the law that, a decision reached without affording parties right to be heard is a nullity. The omission is fatal which goes to the root of the decision even if the decision would have not changed upon hearing them thereof. This matter falls in no exception.

Reference is made to cases of ***Alisum Properties Limited v Salum Selenda Msangi (administrator of the estate of the late Selenda Ramadhani Msangi)***, Civil Appeal No. 39 of 2018; ***The Registered Trustees of Arusha Muslim Union v the Registered Trustees of National Muslim of Tanzania @ BAKWATA***, Civil Appeal No. 300 of 2017; and ***Kumbwandumi Ndemfoo Ndossi v Mtei Bus Services Limited***, Civil Appeal No. 257 of 2018 (all unreported).

For that reason, I find the first ground of appeal suffices to determine this appeal favourably. Thus, I find no need to determine other grounds of appeal. I accordingly allow the appeal. Further, I hereby quash the decision of RMS dated 12/11/2021 and consequent thereof, the court file is remitted back to the court below forthwith for eventual



hearing of parties within parameters of the law. I make no order to costs.

It is so ordered. The right of appeal is fully explained to the parties.



C.K.K. Morris

Judge

June 30th, 2023

Judgement delivered this **30th** day of **June 2023** in the presence of Mr. Nkwabi S. Lume, appellant and Ms. Rhoda Maruma, advocate holding brief of Mr. Anthony Kanyama, advocate for the respondent.

C.K.K. Morris

Judge

June 30th, 2023