

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB- REGISTRY OF MWANZA  
AT MWANZA**

**MISC. LABOUR APPLICATION NO.26277 OF 2023**

*(From Labour Execution No. 12 of 2020 originating from compliance order of Labour Commissioner dated 26<sup>th</sup> March, 2019)*

**NYARUGUSU MINE COMPANY LTD-----APPLICANT**

VERSUS

**LABOUR COMMISSIONER-----RESPONDENT**

**RULING**

*11<sup>th</sup> & 22<sup>nd</sup> March, 2024*

**ITEMBA, J.**

By this application, the court is being moved to resolve the question of facts and all legal matters arising from the satisfaction of the compliance order by Principal Labour Officer of Geita dated 26<sup>th</sup> March 2019. It is alleged that the order was issued by improper authority. Therefore, this court is asked to release the attachment order of applicant's properties in execution order dated 17/9/2020.

When the matter came for hearing, advocate Akram Adam represented the appellant. The respondent who was duly served, was absent. At the outset, I invited Mr. Akram to submit on whether this matter is proper before this court after noticing that it might be *functus officio*.

He submitted that, there are some questions to be determined by this court under section 38(1) of the **Civil Procedure Code** Cap 33 R. E 2019. That, at the hearing of execution proceedings, the counsel who held brief for the applicant, before Hon. Mahimbali Deputy Registrar (as he then was), had no instructions, therefore, the applicant did not raise any valid issue. That, this matter is not *res judicata* because before Hon. Mgeyekwa J. (as she then was) was an application for extension of time. He submitted further that, one of the questions which they want this court to look at is whether it was proper for the Labour Officer to bring execution application under section 10 of the **Labour Institutions Act** Cap 300 R.E 2019. That, the application for execution was initiated by one Majaliwa, a Labour Officer and there is no records showing that he was allowed by Labour Commissioner or has been delegated by the Labour Commissioner to represent him. That the respective officer introduced himself as a decree holder on a document dated 12/3/2020 an act which was wrong under section 46(6) of the Labour Institution Act which empowers the Labour Commissioner to apply for enforcement of compliance order before the Labour Court.

He went further that, the impugned compliance order directed the applicant to pay salaries to 105 employees amounting to TZS. 284 Million

while the same claims of salary for 105 employees were already resolved. That, earlier on, the said employees filed execution application No. 41/2019 which was dismissed for non-appearance. Therefore, according to him, the subsequent application was *res judicata*. That, there was no investigation done before issuing compliance order by Executing Labour officer, otherwise, the officer would have known that there was previous dismissal order. He therefore prayed for this court to issue an order for the Judgement Debtor not to proceed with compliance order.

I have dispassionately considered the submissions by Mr. Akram. The gist of this application is to challenge execution order dated 17/09/2020 which was rendered by Deputy Registrar in Labor Execution No. 12 of 2020. The said order is being challenged for three reasons that, the compliance order subject to execution was issued by improper authority; that, the execution was not lawfully applied by a Labour Commissioner; and that the deputy Registrar was *functus officio* for the proceedings before him were preceded by Execution No. 41 of 2019 which was dismissed on 17/2/2020. This application was preferred under section 38(1) of the CPC which reads;

*38.-(1) All questions arising between the parties to the suit in which the decree was passed, or their representative, 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. (bolding added for emphasis).*

Therefore, the applicant was supposed to bring to the attention of executing officer all matters arising from execution proceedings before him. In the case of **M/S Hedico Limited and another vs. Exim Bank (Tanzania) Limited and another**, Misc. Commercial Application No. 216 of 2022, this court while discussing the alike application, referred to another case of this court of **Karata Ernest and Others vs. The Attorney General**, Civil Revision No. 10 of 2010 (unreported). At page 6 and 7 of the ruling it made the following observation;

*"Guided by the above authority and taking into consideration the reliefs sought by the applicant, it is my considered view that, **this application ought to have been placed before the executing court** ... In addition, the executing court has powers under section 38 (2) of the Civil Procedure Code to convert execution proceedings to a suit. Thus, **anything which relates to execution, discharge or satisfaction is vested in the exclusive jurisdiction of the executing court**. In terms of the provisions of section 38 (1) of the Civil Procedure Code, the executing court is at best place to determine the matter because it is acquainted with the facts of the execution and this would prevent multiplicity of suits. (Emphasis added)"*

Then, this application ought to have been made before the Executing Officer while executing the decree and not otherwise. Further, based on records, the matter before Hon. Mgeyekwa J. was not about extension of time. It was a revision application against the order of the Deputy Registrar in Labour Execution No. 12 of 2020. The applicant herein filed Labour Revision No. 76 of 2020. The same was challenged by a preliminary objection that this court is functus officio. The preliminary objection was sustained. By its ruling dated 12.11.2020 the court held at page 9; it said:

*"I am holding so because the order of the registrar in execution proceedings are orders of the High Court that it cannot reconstitute itself to revise its own decision... the court cannot assume revisional powers over its own orders. Therefore, this court is functus officio."*

Therefore, the issue as to whether the decision of the deputy registrar dated 17/09/2020 can be challenged by this court was finally determined. Regardless, the applicant has again filed this application. This is nothing short of an abuse of court process. It is trite law that when a court finally disposed of a matter it ceases to have jurisdiction over it. See the case of **Leopold Mutembei v Principal Assistant Registrar of Tittles, Ministry of Land, Housing and Urban Development and Another**, Civil Appeal No. 57 of 2017; and **The International Airlines of the United**

**Arab Emirates v Nassor Nassor**, Civil Appeal No. 379 of 2019 (both unreported).

For the stated reasons, this court lacks jurisdiction to re-open execution proceedings by the Deputy Registrar. It is functus officio. The application is therefore struck out. For the matter is based on labour dispute, each party to shoulder own costs. It is so ordered. Right of appeal fully explained to the parties.

DATED at **MWANZA** this **22<sup>nd</sup> March**, 2024.



**L. J. ITEMBA  
JUDGE**

Judgment delivered under my hand and seal this 22<sup>nd</sup> Day of March 2024, in the presence of G. Mnjari, RMA and in the absence of the applicant.

**L. J. ITEMBA  
JUDGE**

