

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF MWANZA
AT MWANZA
CIVIL REFERENCE NO. 5849 OF 2024
NKWABI SHING'OMA LUME DECREE HOLDER/APPLICANT
VERSUS
SECRETARY GENERAL, CHAMA
CHA MAPINDUZI JUDGMENT DEBTOR/RESPONDENT
RULING

25th March & 2nd April 2024

CHUMA, J.

The background of this matter is such that the dispute between the parties above is labour-related. The dispute started with the applicant, an 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 as per the contract and pay him salary arrears for the whole period between the termination of his service to reinstatement. The respondent appealed to the Minister responsible for labour matters. He failed, 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 (hereinafter 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 apex Court nullified the executing court (RMS) court's order for want of jurisdiction. It further ordered execution proceedings to proceed from where Hon. Masesa ended.

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 25.2.2021 the RMS Court granted the subject application as sought. However, the order was not complied with by the respondent. Consequently, on 08.7.2021 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 on 19.08.2021, the applicant sought the order for *garnishee order nisi* from the same court

against the respondent's CRDB Bank account no. 01J1005069303. On 12.11.2021 the court disclaimed its previous ruling dated 25.2.2021 without affording parties the right to be heard. It reasoned that there was no decision of the Board in place awarding the applicant compensation of Tshs. 84,027.943.23. The High Court then quashed the RMS decision dated 12.11.2021 and remitted back the matter to the lower court for the hearing of the parties within the parameters of the law.

Following the decision of the High Court the matter once again went back to the lower court for execution.

On 06.11.2023 the executing court was addressed by the parties in dispute. From that submission and the decision of the High Court in Civil Appeal No 59 of 2021, the lower court declared its order dated 25.2.2021 as mistakenly issued as the decreed amount subject to execution was modified to read TZS. 84,027,943.23. She finally referred the matter to this court for directives in respect of its order dated 25.2.2021 against the decreed amount of TZS. 11,567,647.50. hence this ruling.

On 25.3.2024 I invited the parties to address this court on the referred matter and had the following to submit.

Mr.Nkwabi Lume contended that the decision of 25.2.2021 based on section 38 (1) of CPC all matters concerning execution have to be

determined by the executing court. The term decree was defined in the case of **Tanganyika Motors Ltd Vs. Transcontinental Forwarded Ltd** Civil Appeal No. 44 of 1995 on pages 4 to 7 that orders passed by the execution court are tantamount to a decree of the court. What was decided by Hon. Ndyekobora is a decree and has to be executed. The amount ordered by Hon. Masesa and Ndyekobora is all right only what differs there is just time. I then pray the awarded of TZS. 84,027,943.23 be executed.

In rebuttal, Mr. Kanyama, respondent's advocate strongly challenged the submission of Mr. Nkwabi Lume by arguing that the ruling of Hon. Ndyekobora specifically explained that there was a mistake in revising the amount awarded. In the decision of the CAT between the instant parties dated 25th March, 2020, the court explained in detail section 38 (1) of CPC on page 11. The court then nullified all lower court proceedings and decisions and remitted back the matter to proceed with execution where Hon. Masesa ended and TZS. 84,027,943.23 was nullified. What is entitled is TSZ. 11,567,647.50. He then invited this court to revisit the decision of the Court of Appeal and decide.

I have thoroughly followed up and weighed the competing submissions made by the parties in controversy, the referred ruling by Hon. Ndyekobora, the record, and the following are my findings.

There is no dispute that the matter is at the execution stage. And that the record reveals that at first the court of appeal in the case of **Nkwabi Shing'oma Lume Vs. Secretary General, Chama Cha Mapinduzi** (Civil Appeal 234 of 2017) [2020] TZCA 67 (25.3.2020) directed the lower court what is required after nullifying the lower court and the High Courts proceedings and orders that had the effect of modifying the decree instead of executing it.

As narrated in the facts of this case, the executing court instead of executing the decree of the Conciliation Board dated 10.8.2005 went ahead by correcting or modifying it. In doing so went beyond its powers together with the directives of the higher court here in above explained. In other words, the directives by the Court of Appeal in Civil Appeal No. 234 of 2017 and that of the High Court Civil Appeal No. 59 of 2022 were not complied with. The powers of executing court are limited to the implementation of the decree brought before it. This position was also discussed in the case of **Maharaj Kumar Mahmud Hasan Khan Vs. Moti Lai Banker** on July 1960, AIR 1961 ALL 1 that;

"I hold it to be a correct proposition of law that a Court executing a decree is bound by the terms of that decree and cannot go behind them. It is equally true as a general proposition that such a Court can neither add to such a decree nor vary its terms."

Having observed so, all subsequent proceedings and orders issued by the executing court having the effect of rectifying the decree of the Conciliation Board are null and void. Therefore, the proceedings and order dated 25.2.2021 and its subsequent are all quashed and set aside. I order the matter be remitted back to the executing court to proceed with the execution within its mandate in line with the law. Owing to the circumstances of this matter parties are to bear their own cost.

It is so ordered.

DATED at **MWANZA** this 2nd day of April, 2024.



W. M. CHUMA
JUDGE

The Ruling entered in the presence of Mr. Nkwabi Shing'oma Lume who appeared in person and in the absent of the respondent, this 2nd day of April, 2024.



W. M. CHUMA

JUDGE