

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT IRINGA

EXECUTION NO. 8 OF 2023

(Originating from the Labour Dispute No. CMA/NJ/FEB/11/2016)

STELLA NGWANI..... DECREE HOLDER VERSUS

VERSUS

CHANI AUTO GARAGE.....JUDGEMENT DEBTOR

RULING

Date of last order: 23.04.2024

Date of Ruling: 30.05.2024

LALTAIKA, J.

The Decree holder herein **STELLA NGWANI** has filed this application under Rule 48(3), 49(3), 49(2) of the Labour Court Rules, G.N. No. 106 of 2007, Order XXL Rule 9,10 (2) and 28 of the **Civil Procedure Code** Cap 33 R.E. 2019 and Civil Procedure Code (Approved Forms) Notice, 2017 GN 388 of 2017. Specifically, the Applicant is praying that Nelson Naftali Chanimbaga (Administrator and one who signed Mediator's Certificate of Settlement on behalf of Judgement debtor) be detained as a Civil Prisoner.

When the application was called on for hearing on the 18th day of March 2024, the Decree holder appeared through Mr. Cosmas Masimo,

learned Advocate. The Judgment debtor, on the other hand, was represented by Mr. Brighton Hagai Kagu, learned Advocate. Parties opted to dispose of the application by way of written submissions and a schedule to that effect was ordered. The next part of this ruling is a summary of the submissions by both parties.

Mr. Masimo, Counsel for the Decree holder, submitting in support of the application stated that the Decree holder in this application had applied for execution and had opted for detention as a civil prisoner as the mode of execution.

He further explained that the Decree holder had filed a labour dispute against the Judgment Debtor, namely **Labour Dispute CMA/NJ/FEB/11/2016**. In mediation, Mr. Masimo averred, the Judgment Debtor had agreed to pay the Decree holder a sum of **TZS 10,368,580** in two instalments: the first instalment of TZS 1,500,000 from 09/03/2016 to 23/03/2016, and the second instalment of TZS 8,868,580 to be paid within four months from 01/04/2014 to 31/07/2016. Unfortunately, argued Mr. Masimo, the Judgment Debtor had failed to pay even a single cent from the date of signing the Mediation Agreement to this date, hence the current application for execution.

Mr. Masimo also stated that the Decree holder had exercised due diligence to ascertain the properties owned by the Judgment Debtor for attachment in execution but had failed to identify any property that could be attached to cover the amount claimed. Consequently, Mr. Masimo reasoned, the Decree holder had opted for the detention of one Nelson Naftali Chanimbaga (Administrator of the Judgment Debtor and the person who signed the Mediator's Certificate of Settlement on behalf of the Judgment Debtor) as the mode of execution.

He highlighted that in the civil legal system, there is no strict rule regarding the mode of execution to be applied first by the Decree holder. The Decree holder is free to choose whichever mode of execution is most suitable for realizing the fruits of the decree, subject to conditions and limitations imposed by the court as stated under section 42 of the **Civil Procedure Code Cap 33 R.E 2019**. Section 42(c) of the Civil Procedure Code, Mr. Masimo argued, provides for arrest and detention as one of the modes of execution. Therefore, the Decree holder is at liberty to choose arrest and detention as the mode of execution, as opted in this application.

Based on the above submission and the foregoing, Mr. Masimo humbly prayed that the Court grant the application for execution as prayed for by the Decree holder.

Mr. Kaguo, Counsel for the Judgment Debtor, submitted in response that the application was incompetent for several reasons. According to Rule 48(3) of Labour Court Rules, GN.No.106 of 2007, and Order XXI Rules 9, 10(2), and 28 of the Civil Procedure Code (Approved Forms) Notice, 2017, GN No.388/2017, Mr. Kaguo reasoned, a decree may be executed by arresting and imprisoning a Judgment Debtor as a civil prisoner. In the present application, averred Mr. Kaguo, **the Judgment Debtor is a limited company, Chani Auto Garage Company Limited.**

Mr. Kaguo questioned whether a person who is not a member, director, or shareholder could be committed to prison as a civil prisoner in the execution of a money decree. He asserted that the answer was negative, stating it is impossible for a person who is not affiliated with the company in such a manner to be committed to prison simply because the company has failed to pay its debts.

He further stated that the decree should be executed against the company, which is the Judgment Debtor. In law, companies are distinct

entities from their members, directors, or shareholders. Therefore, it was wrong to apply for the arrest and imprisonment of Mr. Nelson Chanimbaga, as he is neither a member, shareholder, nor director of the company. Mr. Kaguo pointed out that the applicant failed to establish any relationship between Mr. Chanimbaga and Chani Auto Garage Co. Ltd., the Judgment Debtor. Hence, he argued that it would be safe to hold that Mr. Chanimbaga has no relationship with the Judgment Debtor, and the application should be dismissed with costs.

Mr. Kaguo emphasized that this position is supported by several decided cases, including **Umoja wa Wakulima Wadogo Bonde la Kisere Uwaboki v. Noble Motors Limited**, Misc. Application No.131 of 2020 at Dar es Salaam (unreported), where the Court dismissed the application for failing to establish the relationship between Mr. Patel and the respondent.

Mr. Kaguo emphasized that once a company is legally incorporated, it acquires a legal personality distinct from its members, as established in the famous case of **Salomon v. Salomon** [1897] AC 22. Therefore, the learned Counsel averred, Mr. Chanimbaga is not a party to this case, and the sole party is Chani Auto Garage Co. Ltd., the employer of the Decree Holder.

He reiterated that, from a juristic perspective, a company is a legal entity distinct from its members, directors, or shareholders, as per **Salomon v. Salomon** (supra). The effect of this principle is that the company has a corporate personality distinct from its members, and they cannot be held personally liable for the company's debts unless the Court pierces the corporate veil. In the present case, the applicant failed to establish Mr. Chanimbaga's capacity as a member, director, or shareholder of the company.

Mr. Kaguo argued that the Decree Holder appeared to want the Court to misuse its power by committing the Judgment Debtor to prison without resorting to other remedies. Detaining a person as a civil prisoner, Mr. Kaguo emphasized, touches on their freedom of movement and dignity hence there must be concrete proof on certain matters as per Rule 39(2) of Order XXI of the **Civil Procedure Code** (supra). He prayed that the application be dismissed.

Mr. Masimo in his rejoinder submission, reiterated the Decree Holder's original submission in support of the application. He further argued that, in the legal system, parties are bound by their pleadings. At no time did the Judgment Debtor denounce the involvement of Nelson Chani nor challenge the authenticity of the Mediator's Certificate of

Settlement, which was signed by Nelson Chani on behalf of the Judgment Debtor. He prayed that the Court be pleased to grant the application for execution as sought by the Decree Holder.

I have dispassionately considered the rival submissions and carefully examined the court records. Essentially the Decree Holder, represented by Mr. Masimo, submitted that Mr. Nelson Chanimbaga, who signed the Mediator's Certificate of Settlement on behalf of the Judgment Debtor in Labour Dispute CMA/NJ/FEB/11/2016, should be detained as a civil prisoner as a mode of execution. Mr. Masimo emphasized that Mr. Chanimbaga had been vested with the authority to act on behalf of the Judgment Debtor and thus is a proper party for detention to enforce the decree.

The Judgment Debtor, represented by Mr. Kagu, opposed the application, asserting that Mr. Chanimbaga is not a member, director, or shareholder of Chani Auto Garage Company Limited, and therefore, cannot be committed to prison as a civil prisoner for the company's debts.

Upon careful consideration of the submissions and the applicable law, the Court finds that although Mr. Chanimbaga signed the Mediator's Certificate of Settlement on behalf of the Judgment Debtor, this act does not automatically extend to personal liability for the company's debts

Moreover, the legal Distinction Between Company and Individual as per the legal principle established in **Salomon v. Salomon** [1897] AC 22, a company is a separate legal entity distinct from its members, directors, or shareholders. Detention as a civil prisoner for the company's debt requires a clear legal basis that pierces this corporate veil, which has not been satisfactorily demonstrated in this case.

It is instructive to note that the Judgment Debtor did not dispute Mr. Chanimbaga's role during the mediation, yet this does not equate to an admission of his liability for the debt. The Court must adhere to the principle that execution against a company cannot be enforced personally against an individual without clear and compelling evidence of personal liability.

Considering the foregoing analysis, I hold that the application to detain Mr. Nelson Chanimbaga as a civil prisoner for the debt of Chani Auto Garage Company Limited lacks merit. The connection between Mr. Chanimbaga and the Judgment Debtor, in the context of personal liability, has not been sufficiently established.

In the upshot, the application is hereby dismissed for lack of merit. This being a labour matter, I make no order as to costs.

It is so ordered.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
30.05.2024**

Court

Ruling delivered under my hand and the seal of this Court this 30th day of May 2024 in the Presence of Mr. Cosmas Masimo, Counsel for for the Decree Holder and in the absence of the Judgement Debtor and/or his Counsel.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
30.05.2024**

Court

The right to appeal to the Court of Appeal of Tanzania is fully explained.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
30.05.2024**