

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**

**MISC. APPLICATION NO. 90 OF 2016**

**BETWEEN**

**SHIRIKA LA USAFIRI DAR ES SALAAM LIMITED..... APPLICANT**

**VERSUS**

**JUMANNE TOSHA AND 16 OTHERS..... 1<sup>ST</sup> RESPONDENT**

**ABDALLAH MAKATTA**

**T/A SENSITIVE AUCTION MART & COURT BROKERS ... 2<sup>ND</sup> RESPONDENT**

**SHIRIKA LA USAFIRI DAR ES SALAAM (UDA)..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**Date of Last Order 10/04/2017**

**Date of Ruling 18/04/2017**

**NYERERE J:-**

This application is made under certificate of urgency pursuant to Rule 24(1) (2),(3)11 & Rule 55(1) of the Labour Court Rules GN 106/2007 and Order XXI, Rule 57 (1) of the Civil Procedure Code Act, 1966 [ Cap 33 R:E 2002] and any other enabling provision of the law.

The applicant/SHIRIKA LA USAFIRI DAR ES SALAAM LIMITED, is seeking among other Orders this court to lift the order of the attachment of

applicants properties (Four Buses) type Eicher which were wrongly attached in the Execution proceedings Number 71 of 2016 dated 16<sup>th</sup> March, 2016, which the applicant is not a Judgment Debtor, nor a party to the said Execution proceedings.

At the hearing the Applicant was represented by Mr. Bethuel Peter Advocate, while the 1<sup>st</sup> Respondent had the representation of Mr. Lucas Nyagawa, Advocate and 2<sup>nd</sup> Respondent was represented by Mr. Nyamuko Makata, the hearing proceeded viva voce, 3<sup>rd</sup> Respondent was nowhere to be seen so the court proceeded in his absence as Applicant failed to serve them.

Mr. Bethuel Peter Counsel for Applicant argued and submitted that the application is based on the Execution Proceeding No. 71/2016 in which the court ordered attachment of the applicant's Buses in compliance with CMA award between the 1<sup>st</sup> Respondent and the 3<sup>rd</sup> respondent. He contended that the applicant is not the Decree Debtor in the CMA proceedings, which lead to an award dated 21<sup>st</sup> January, 2016 rather it is the 3<sup>rd</sup> Respondent.

Mr. Bethuel Peter Counsel for Applicant further argued that the properties which have been attached in Execution No. 71/2016 are not the properties of the 3<sup>rd</sup> Respondent because the Applicant is SHIRIKA LA USAFIRI DAR ES SALAAM LTD and not SHIRIKA LA USAFIRI DAR ES SALAAM (UDA).

Counsel for Applicant was of the view that the 1<sup>st</sup> respondent in this application admitted in paragraph 12 of their Counter Affidavit that, the 3<sup>rd</sup> Respondent is not a legal person capable of been sued or sue. He further contended that the dispute at CMA was between 1<sup>st</sup> respondent and 3<sup>rd</sup> respondent, that the applicant was not a party to the CMA proceedings, thus Applicant prays this court to find out that the order of attachment issued against the properties of the applicant in Execution No. 71/2016 is misconceived and that the same should be uplifted and set aside.

In rebuttal Mr. Lucas Nyagawa for the 1<sup>st</sup> Respondent submitted that Execution No. 71/2016 originated from Labour Dispute No. DSM/ILA/R.142/2015. That in the Labour Dispute at CMA the applicant was part of the proceedings, and this can be proved by annexure "J" attached to paragraph 8 of the Affidavit. In that annexure there is CMA Form No. 1 and 5. The form No. 1 showed the 1<sup>st</sup> respondent as employer SHIRIKA LA USAFIRI DAR ES SALAAM LTD. Therefore it is not true that the applicant was not part in CMA proceedings.

Mr. Lucas Nyagawa for the Respondent further argued that the Arbitrator at the CMA had slip of pen, thus the omission of the word "Ltd". Therefore both the applicant and the 1<sup>st</sup> respondent are parties to the CMA proceedings and the award was issued against them, furthermore the

1<sup>st</sup> respondents are the employees of the Applicant and both were terminated by the Applicant. That Respondents Counter affidavit on paragraph 9 annexures "J2" collectively" are Termination letters; contracts of Employment and Certificate of Services.

Mr. Lucas Nyagawa for the Respondent's was of the view the applicant SHIRIKA LA UDA LTD and the 3<sup>rd</sup> respondent SHIRIKA LA UDA is the same person and entity. That the order issued against applicant on Execution No. 71/2016 is proper, thus Mr. Lucas Nyagawa for the Respondent prays for the dismissal of this application entirely.

In further rebuttal Mr. Nyamuko Makata for 2<sup>nd</sup> respondent argued that the attached four Buses belong to the Applicant and copy of the attachment order is marked "SAM2". Further Mr. Lucas Nyagawa for the Respondent's argued that fourteen days notice was issued to the Applicant, and was served by the 2<sup>nd</sup> respondent, accompanied by the 1<sup>st</sup> Respondent.

Mr. Lucas Nyagawa for the Respondent's prays this honourable court to consider the evidence adduced by the 1<sup>st</sup> respondent, the 2<sup>nd</sup> respondent.

In rejoinder Mr. Bethuel Peter Counsel for Applicant argued that the Applicant "SHIRIKA LA USAFIRI DAR ES SALAAM LTD" is not a Decree Debtor to the CMA decision. The CMA decision is against a different legal person. And application for Execution No. 71/2016 was preferred against the

3<sup>rd</sup> respondent. That annexure "SUDL<sub>1</sub>" indicates that the Applicant is SHIRIKA LA USAFIRI DAR ES SALAAM LTD and was a registered legal entity since 4<sup>th</sup> June, 1974, the 3<sup>rd</sup> respondent is a non-existent entity and is not legal capable of being sued citing case of TOSI YATESI VS TANZANIA HARBOUR AUTHORITY & ANOTHER Civil application No. 164/2006CAT at page 6-7.

Counsel for Applicant went on to argue the 1<sup>st</sup> respondent was supposed to immediately invoke the provisions of Section 90 of Employment and Labour Relations Act No. 6/2004 together with Rule 30(1) of GN No. 64/2007 , that the CMA could apply for amendment of parties name before proceeding to file application for Execution.

After due consideration of the oral submissions by both parties, as well as my understanding of the applicable laws and practice, I observe and decide as follows:-

Mr. Bethuel Peter Counsel for Applicantasked the Court to lift and set aside the attachment Order against applicant's properties in Execution No. 71/2016 on grounds that the applicant is not the Decree Debtor in the CMA proceedings of an award dated 21<sup>st</sup> January, 2016.

The learned advocate for applicant vehemently gave a factual background that Applicant "SHIRIKA LA USAFIRI DAR ES SALAAM LTD" is not a Decree Debtor to the CMA decision, that SHIRIKA LA USAFIRI DAR ES SALAAM

LTD has been registered since 4<sup>th</sup> June, 1974. He argued that, Execution No. 71/2016 was preferred against the 3<sup>rd</sup> respondent a non-existent entity. Indeed rightly submitted because Form No. 1 at page 3 item 2 shows employer is the Applicant.

On perusing the court records, all the material before us including the annexures, and the affidavits, the court is able to determine that the 1<sup>st</sup> Respondent was employed by **SHIRIKA LA USAFIRI DAR ES SALAAM LIMITED (UDA) Exhibit "JTI" - TAARIFA YA KUAJIRIWA NA MKATABA WA KAZI KAMA DEREVA WA BASI**, and were retrenched by the same entity on 9<sup>th</sup>/ 02/2015 via letter dated 13/02/2015. But more especially the CMA award in respect to Labour Dispute CMA/DSM/ILA/R.142/2015 parties to it were between JUMANNE TOSHA AND 16 OTHERS V. SHIRIKA LA USAFIRI DAR ES SALAAM.

In that regard Applicant has legitimate concern regarding the CMA decision being against a different name. In the circumstance I concur with Counsel for Applicant that 1<sup>st</sup> respondent was supposed to invoke the provisions of Section 90 of Employment and Labour Relations Act No. 6/2004 read together with Rule 30(1) of Labour Institutions (Mediation and Arbitration) GN No. 64/2007, and apply for amendment of the parties name before proceeding with the execution.

In order to observe what has been submitted by applicant, I visited section 90 of the Employment and Labour Relations Act, GN No. 6/2004; which states;

**"an arbitrator who has made an award under section 88(8) may, on application or on his own motion, correct in the award any clerical mistake or error arising from incidental slip or omission".**

From the wording of the above section; I take the meaning of the provision to mean; correction on clerical mistake, or error arising from any accidental slip or omission from the award, and the correction is to be done as provided for under the law, fourteen days from the date on which the applicant became aware of the arbitral award, as per Rule 30(1) of the Labour Institutions Mediation and Arbitration Rules 2007.

Having noted this serious anomaly i.e. omission from the CMA award not including the word LTD thus rendering the said award to be of completely different person from the employer name as indicated in the CMA Form No. 1 at page 3 item 2 which reads SHIRIKA LA USAFIRI DAR ES SALAAM LTD. It is the finding of the court that the 1<sup>st</sup> respondent was supposed to go back to CMA to make corrections of that error under Rule

30(1) of Labour Institution (Mediation and Arbitration) GN No. 64/2007 and section 90 of Employment and Labour Relations Act, of Act No. 6/2004.

In the end result this application succeeds in its entirety, the attachment order is hereby lifted and I order 2<sup>nd</sup> respondent immediately to release the four Motor Vehicles Make Eicher (Busses) belonging to the applicant which were wrongly attached in the Execution Number 71 of 2016 dated 16<sup>th</sup> March, 2016.

However, since this matter originated from employment dispute I make no order as to cost as per Rule 51 (1) of the Labour Court Rules GN 106/2007.

  
**A.C. Nyerere**  
**JUDGE**  
**18/04/2018**