

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

REVISION NO. 482 OF 2019

BETWEEN

WILSON CHACHA APPLICANT

VERSUS

THE DAR ES SALAAM WATER AND SEWAGE AUTHORITY

AS SUCCESSOR OF MENEJA MKUU DAWASCO.....RESPONDENT

RULING

Date of Last Order: 16/10/2020

Date of Judgment: 24/12/2020

Aboud, J.

The applicant, **WILSON CHACHA** made the present application to call upon the court to examine the legality and regularity of proceedings, ruling and orders of the Hon. Deputy Registrar E.G Mrangu dated 19/07/2018 and 06/09/2018 in Execution no. 351 of 2013. The application is made under the provision of Rule 24 (1) 24 (2) (a) (b) (c) (d) (e) and (f), 24 (3) (a) (b) (c) (d) and (e), 28 (1) (c) (d) and (e), 55 (1) (2) of the Labour Court Rules, 2007 GN. No. 106 of 2007, Order 3 (1), 4 (3), 5 (1), 5 (2), 5 (3) and 6 (1) of the Public Corporation (DAWASCO) (Disestablishment) Order, 2018

GN. No. 414 of 2018 and pursuant to the Order of the Court. The application is supported by the applicant's affidavit. The respondent filed a counter affidavit challenging the application. The relevant objection which is the subject matter of this ruling is to the effect that:-

- i. The applicant has no cause of action against the respondent.

The preliminary objection was argued by way of written submissions. At the hearing both parties were represented by Learned Counsels. Dr. Lucas Charles Kamanija was for the applicant whereas Ms. Zakia Selemani appeared for the respondent. Both parties duly filed their submissions as scheduled, I commend them for their adherence.

Before arguing in support of the preliminary objection Ms. Zakia Selemani gave, a brief background of the matter at hand. She averred that, the applicant was a former employee of the respondent. He was terminated from his employment on 2006 and referred his dispute to Reconciliation Board of Temeke via Labour Dispute No. KZ/U.10/RF/10407/19, the Board ordered the applicant be dismissed

from employment. Being dissatisfied the applicant appealed to the Minister of Labour who revised the Board's decision and ordered that the applicant be terminated without loss of his remuneration. The Learned Counsel added that, the applicant was paid his terminal benefits. However, on 2013 he came up with an application for execution No. 351/2013 claiming for arrears calculated at the tune of Tshs. 757,363,228/=, the said application was allowed ex-parte by Hon. Sarwatt. The applicant prayed for attachment of some of the respondent's Motor Vehicle and Bank account. In the process of executing the Court made various orders including attachment of the decree debtor's motor vehicle and bank account, but later the execution order was vacated by Hon. Sarwatt.

Thereafter the applicant filed another execution application which was later dismissed by Hon. Lyimo, Deputy Registrar on the ground that this court has no jurisdiction to entertain the matter. Again being dissatisfied the applicant filed revision application challenging the decision of the Deputy Registrar where he succeeded and the decision thereto was revised and the applicant proceeded with his application for execution.

It was further argued that, on the other hand the defunct DAWASCO among other applications filed an application for stay of execution, where in response to that application the applicant herein raised a preliminary objection. The relevant objection was to the effect that DAWASCO was a stranger to the matter because the applicant had sued MENEJA MKUU DAWASCO and not DAWASCO. The Learned Counsel averred that, the respondent conceded to the preliminary objection. She further stated that, surprisingly the applicant made the same mistake of suing the defunct DAWASCO. The respondent alleged that they appeared and notified the Court how were wrongly sued and, without any justifiable reasons the Court proceeded with execution with directions to the decree holder to bring the bank statement of the defunct DAWASCO with a view of issuing a garnishee order. She submitted that, the attachment was unsuccessful because the case was between the applicant and MENEJA MKUU DAWASCO and not DAWASCO.

It was further submitted that, regarding the preliminary objection raised, DAWASA has never been and shall never be in any case as far as the law is concerned a successor of Meneja Mkuu DAWASCO. It was argued that, the applicant misconstrued Meneja

Mkuu DAWASCO as an individual and DAWASCO as a public entity that the same could be sued as the same and one entity.

It was further argued that, DAWASCO is a legal entity capable of suing and being sued by its own name as established under section 4 (2) of the Public Corporation Act, No. 01 of 1992. The Learned Counsel argued that, there is no way Meneja Mkuu DAWASCO, an individual employee could be sued in the place of the defunct DAWASCO. It was strongly submitted that, DAWASA did not become a successor of Meneja Mkuu DAWASCO. To strengthen the submission, the Learned Counsel referred the Court to the case of **Deonatus Mkumbo and Robert K. Lwamuzigu Vs. The District Executive Bariadi District Council**, Civ. Case No. 14/2009 where it was held that: -

!... as regard to the District Executive Director (DED) being sued in lieu of the District Council, I will agree with Ms. Kawega that of the two, only the later were autonomous capable to sue or being sued in their name. Nor this requirement is optional. It is purely a point of law. The DED being the Chief Executive Officer (CEO) is immaterial. One may wish to know that powers to sue or of

being sued is essentially a question of legal personality. At times, this has got nothing material to do with financial controlling powers of oneself. Nor an employee, the DED for that matter, be sued in the place of the employer (the respective District Council)...'

It was further argued that the fact that the officers of the defunct DAWASCO are still coming to court since the matter was filed does not legally qualify Meneja Mkuu DAWASCO to become a proper party to be sued by the applicant in lieu of DAWASCO.

The Learned Counsel went on to submit that, it is a cardinal principle of law that, there should be end to litigation, the principle which was well illustrated in the case of **New Tabora Textile (T) Ltd. vs. Tanzania Union of Industrial and Commercial Workers (TUICO)**, Rev. No. 05/2016, HC, Tabora (unreported). She stated that, the applicant has been in this Court with several applications trying to reap what he has never sown unsuccessful. She therefore, prayed for the application to be dismissed in its entirety for lack of merit.

Responding to the application Dr. Lucas Charles Kamanija, the applicant's Legal Counsel submitted that, the respondent's preliminary objection is grossly misconceived and misplaced in the following grounds. Firstly, he stated that the present application for revision is against the proceedings, rulings and orders of the Deputy Registrar of this Court dated 19/07/2018 and 06/09/2018 in execution No. 351 of 2013 and not the suit against the respondent as claimed by the respondent's Counsel therefore, the respondent's submission to that effect is irrelevant.

Secondly the Learned Counsel submitted that, there is no dispute that the applicant and Meneja Mkuu DAWASCO were employees of the defunct DAWASCO. He stated that, Order 6 (1) of the Public Corporation (DAWASCO) (Disestablishment) Order, GN. No. 414 of 2018 (herein referred as GN No. 414 of 2018) made DAWASA the successor of all officers and employees of DAWASCO including Meneja Mkuu DAWASCO. The Learned Counsel cited a number of provisions which empowered the applicant to join DAWASA in this suit as the successor of Meneja Mkuu DAWASCO. He added that, it should be noted Execution No. 351 of 2013 is not a suit rather it is an application for execution of the award of the Minister for Labour in

respect of arrears which the applicant had not been paid by the Decree Debtor (Meneja Mkuu Dawasco).

The Learned Counsel further argued that it has been settled by the Court of Appeal that an application for execution can be made against a legal person (corporate personality) or any individual person/officer who is responsible for paying the decree holder. To support his submission he referred the Court to the case of **Yusufu Manji vs. Edward Masanja and Abdallah Juma** [2006] TLR 127. He submitted that, in that case there was an application for lifting veil of incorporation and making the Managing Director of the company (Yusufu Manji) personally responsible. He urged the Court to apply the same principle in the present application. He therefore prayed for the preliminary objection to be dismissed and the application to proceed on merit.

In rejoinder Ms. Zakia Selemani strongly submitted that, when the applicant filed execution No. 351 of 2013, Wilson Chacha vs. Meneja Mkuu DAWASCO the same was filed against a wrong party of which the same claims cannot be filed against DAWASA. She stated that it is immaterial that the present application is against the

proceedings, rulings and orders of the Deputy Registrar of this Court. She added that, the fact that the present application is not a suit does not guarantee the applicant herein to claim against a person who is a stranger to the matter.

The Learned Counsel further argued that, their contention is that in any claim whether a suit or an application it has to abide to the law. She said that, the provisions cited by the applicant's Counsel are irrelevant and misleading the court. As to the case of **Yusufu Manji** (supra) she stated that, the same is distinguishable to the present application. She therefore prayed for the application to be dismissed.

Having carefully examined the parties' submissions, and considering Court's records, relevant laws and case laws, I find the issue for determination before the Court is whether the preliminary objection raised by the respondent has merit.

In this application the respondent strongly disputed that the applicant has no cause of action against her. There is no dispute that initially the matter at hand was between the applicant and Meneja Mkuu of DAWASCO. It is apparent that the respondent herein was

joined in the present application as the successor of Meneja Mkuu of DAWASCO. Now the question to be addressed before the Court is whether the respondent is the successor of Meneja Mkuu of DAWASCO.

DAWASCO was a public corporation established under Order 4 of the Public Corporation (DAWASCO) (Establishment) Order, GN. No. 139 of 2005. The said provision is to the effect that:-

*'Order 4 (1) there is hereby established a public corporation to be known as the Dar es Salaam Water and Sewage Corporation
(2) Subject to subparagraph (1) the Corporation shall have all the attributes of section 4 (2) of the Act'.*

In the relevant Order cited above the Act was defined as the Public Corporation Act. Under the Public Corporation Act, 1992 the attributes of the corporation were stipulated under section 4 which provide as follows:-

'Section 4 (1) The President may by Order published in the Gazette establish a public corporation for such functions or purposes as he may specify in the Order.

(2) Every public Corporation established by an Order made under this section shall -

(a) have perpetual succession and a common seal;

(b) in its corporate name be capable of suing and being sued’.

[Emphasis supplied].

As clearly stipulated above DAWASCO had a power to sue and be sued in its own name. However the applicant herein on his own whims decided to sue an individual employee, Meneja Mkuu DAWASCO in lieu of DAWASCO. The applicant’s Counsel argued that the present application is not a suit it is an application. In this aspect I fully agree with the respondent Counsel’s submission that, regardless of whether the present application is a suit or an application it had to be instituted against a proper party.

The applicant’s Counsel further argued that, both the applicant and Meneja Mkuu DAWASCO were employees of the defunct DAWASCO and that since DAWASA is the successor of all officers and employees of DAWASCO, then he is the proper party to be sued in the present application as provided under Order 6 (1) of GN. No. 414

of 2018. The disputed provision provides as follows:-

'Order 6 (1) Consequent upon disestablishment of DAWASCO, all officers and employees of DAWASCO shall, from the date of publication of this Order, be deemed to have been transferred to DAWASA.'

I have read between the lines the provision quoted above and my general understanding is that, DAWASA became the successor of all employees and officers of the defunct DAWASCO. However, in the relevant provision and in the Order at large there is no provision stipulating that DAWASA became the successor of all proceedings instituted against an individual employee. To the contrary the charges or suits which were transferred to DAWASA were the ones instituted by or on behalf of DAWASCO and not otherwise, this is in accordance with Order 5(3) of GN 414 of 2018 which provides as follows:-

'Order 5 (3) - For the purpose of subparagraph (2), any suit or charge subsisting or pending in any court of law or tribunal and any charge instituted by or on behalf of DAWASCO, shall be substituted in the name of DAWASA and any damages or reliefs or any penalty arising thereby shall be payable to, or

paid by or imposed on DAWASA, consequent upon the disestablishment of DAWASCO'.

I have noted the applicant's prayer of applying the principles in the case of **Yusuf Manji** (supra) in the present application. As correctly submitted by the respondent's Counsel, such case is distinguishable to the circumstances at hand where the applicant. In the referred case it was a proceeding against a private company where it is possible to lift veil of incorporation in certain special circumstances. However the present application is against the public corporation of which the principle of lifting of corporate veil cannot apply at all. Meneja Mkuu DAWASCO is not a shareholder of DAWASCO, so cannot be held liable for its liabilities like what was in Yusuf Manji's case.

In my view the present application initially ought to have been instituted against DAWASCO and when DAWASA came in as its successor would have acquired status to be sued in this application. Unfortunately, that is not the position to the matter at hand which was wrongly instituted against an individual employee, Meneja Mkuu DAWASCO. Thus, DAWASA cannot become the successor of such employee.

On the basis of the foregoing it is my view that, the applicant had no cause of action against the respondent as correctly submitted by the respondent's Counsel. In the result I find the preliminary objection raised by the respondent has merit and is hereby upheld. The present application is dismissed for being instituted against a wrong party.

It is so ordered.



I.D. Aboud

JUDGE

24/12/2020