

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

REVISION APPLICATION NO. 128 OF 2020

BETWEEN

CENTRAL SECURITY GUARDS LTD..... APPLICANT

AND

RAMADHANI SHOMARI AND 97 OTHERS.....RESPONDENTS

JUDGMENT

Date of Last Order: 19/04/2021

Date of Judgment: 25/06/2021

A. E. MWIPOPO, J.

Central Security Guard Ltd, the Applicant herein, filed the present application for revision against the decision of the Deputy Registrar in Misc. Application No. 246 of 2019. The Applicant is praying for the Court to call for and examine the record in the respective application presided by Hon. W.S. Ng'umbu for the purpose of satisfying itself as to the correctness, legality and propriety of the proceedings and orders made thereto.

The application was supported by the chamber summons and affidavit sworn by Sedrick Allen Mbunda, Applicant's. The Affidavit contains two grounds of revision in paragraph 7. The grounds are as follows:-

1. The Deputy Registrar entertained the application by allowing the Respondent to defend the case through an affidavit which had been filed out of time without leave of the Court.
2. In determining the application it was improper for the Deputy Registrar to confine himself to only one issue of service of summons and deliberately ignored other grounds of applications which were advanced by Applicants which if would have been considered the decision would have been different.

Briefly, the background of the dispute is that the Respondents filed Execution case No. 189 of 2017 for execution of the Commission award on 14th September, 2018. Also, the Respondent filed Misc. Application No. 22 of 2018 for a leave of the Court to order the personal properties of the Director of the Respondent one Adam Rashid Chohora be attached and sold in execution of the Commission award. The application was granted on 3rd September, 2018 following failure of the Applicant to appear and defend his case. The Applicant was aggrieved and he filed Misc. Application No. 246 of 2019 before the Court to set aside the default Ruling in Misc. Application No. 22 of 2018. The Deputy Registrar dismissed the application for the reason that there is no reasonable cause shown for setting aside the default ruling. The Applicant

was once again not satisfied with the decision and he filed the present application for revision.

In this revision the Applicant was represented by Mr. Sedrick Allen Mbunda, Advocate, whereas the Respondent was represented by Mr. Ambroce Menance Nkwera, Advocate. Hearing of the application proceeded by way of written submission following Court order.

Submitting in support of the application, the Counsel for the Applicant in summary averred that the Deputy Registrar erred to allow the Respondents to defend in Misc. Application No. 246 of 2019 while they filed their counter affidavit 4 months after they were served with the Notice of Application and Affidavit without procuring leave of the Court. As a matter of law and practice counter affidavit should be filed within 14 days from the date of service. The Counsel cited rule 29(5) (a) of the Labour Institutions (Mediation and Arbitration) Rules, G.N. No. 64 of 2007 as the law providing for the position. The Counsel prayed for the Court to expunge the Respondent's counter affidavit and determine the matter without considering it.

The Counsel proceeded to submit on the second ground of revision that the Deputy Registrar erred to confine himself on the issue of service of summons and deliberately ignored other grounds of applications which were advanced by Applicant, these other grounds if it would be considered the decision would have been different. It is the apparent error on the

face of record for the Deputy Registrar to deliver ruling without determining some of the issues. The Counsel was of the view that the Deputy Registrar has no jurisdiction to determine the issue of lifting of corporate veil and also the Deputy Registrar has no jurisdiction to enter default judgment according to rule 37(1) of the Labour Court Rules, G.N. No. 106 of 2007. The Counsel was of the view that it was wrong for the Deputy Registrar in Misc. Application No. 22 of 2018 to grant default ruling after it was prayed by the Respondents and the Deputy Registrar in application to set aside default ruling was supposed to see the illegality as in our jurisprudence we have only default judgment and there is no default ruling. He submitted that it was evidenced on the ruling at page 9 where the Deputy Registrar misdirected himself and determined the issue of ex parte judgment principles instead of default judgment. Thereafter, the Applicant Counsel prayed for the application be allowed.

In opposition, the Respondent Counsel contested the submission of the Applicant Counsel. In summary, the Respondent's Counsel responded to each of the Applicant's submission on the grounds of revision.

Regarding the issue of the Deputy Registrar to consider the Respondent counter affidavit which was filed out of time, the Counsel submitted that the issue of counter affidavit was addressed by the Deputy Registrar and he find that it has no merits.

The Counsel submitted regarding the revision ground that the Deputy Registrar ignored some of the issues in the application that it is not true as the Deputy Registrar did show in the ruling that the Applicant failed to enter appearance and other factors made him deliver the decision. There was no issue of lifting of corporate veil in Misc. Application No. 246 of 2019 but the respective issue was concerned with execution application. The Deputy Registrar has power to hear execution and other issues arising from execution. During hearing of Misc. Application No. 246 of 2019 the Applicant never raised the issue of Deputy Registrar having no jurisdiction to entertain the matter.

The Respondent's Counsel is of the view that the Applicant is filing endless application to deny their clients rights to enjoy the award they have won since 2013. He prays for litigation to come to an end and application be dismissed.

In rejoinder, the Applicant retaliated his submission in chief.

From the submissions, I'm going to determine each of the issues submitted by the parties herein. On the issue that the Deputy Registrar erred to allow the Respondents to defend in Misc. Application No. 246 of 2019 while they filed their counter affidavit 4 months after they were served with the Notice of Application and Affidavit without procuring leave of the Court, the evidence available in the record shows that the Respondent filed his counter affidavit on 2nd September, 2018. When the

Applicant was submitting, he raised the issue that the counter affidavit was filed out of 14 days provided by the law and prayed for the same to be disregarded. This means that the issue of late filing of the counter affidavit was raised during hearing of the application. In reply, the Respondent urged the Court to have in mind the overriding objective and to determine the matter on its own merits. However, the Deputy Registrar did not determine the issue of late filing of counter affidavit. Despite of the omission, reading the Deputy Registrar's ruling it is very clear that the Deputy Registrar did not consider the Respondent's Counter affidavit in his ruling dated 25th February, 2020 as it was prayed by the Applicant. In the ruling there is nowhere were the counter affidavit or the Respondent submission was referred. Thus, the counter affidavit alleged to be filed late was not considered by the Deputy Registrar at all hence I do not see how the same affected the Applicant.

On the issue that the Deputy Registrar erred to confine himself on the issue of service of summons and deliberately ignored other grounds of application which were advanced by Applicant, the Applicant is of the view that this is the apparent error on the face of record for the Deputy Registrar to deliver ruling without determining some of the issues. In response, the Respondent submitted that the Deputy Registrar considered all the issues and find that there is no reasonable cause for the Court to set aside default ruling.

It is a settled law that application to set aside an ex parte award is granted where the applicant constitute sufficient ground for the Commission or the Court to set aside the ex parte award. This Court in the case of **Mbeki Teachers Sacco's V. Zahra Justas Mango, Revision No. 164 of 2010, High Court Labour Division at Mbeya, (Unreported)**, held that sufficient reason is pre – condition for Court to set aside experte order. The position of the law articulated above in respecting ex parte judgments, is applicable to default judgments as well.

In the case of **YARA Tanzania Limited vs. DB Shapriya & Co. Limited**, Civil Appeal No. 245 of 2018, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), it was held that:-

"..... we do not hesitate to hold that a default judgment, like a summary judgment, is essentially an ex parte judgment in as much as it is entered without hearing an adverse party. In the premises, the position of the law articulated above respecting summary and ex parte judgments, is applicable to default judgments as well."

In the Miscellaneous Labour Application No. 246 of 2019, the Deputy Registrar formulated 5 legal issues for determination. The first four issues were whether or not the Applicant (the Respondent in Misc. Application No. 246 of 2019) was served with notice of application, whether or not he was aware of existence of Misc. Application No. 22 of 2018, whether or not he ever appeared in Court and whether the Applicant was afforded time to file counter affidavit. The last issue which depended on the first four issues was whether or not there is a reasonable cause for setting aside the default ruling.

In the first four issues the Deputy Registrar did find that the answer to be positive. The evidence in record proved that the Applicant Counsel namely Mr. Sylvester Kakobe appeared in Court on 17th May, 2018 and prayed to be granted extension of time to file counter affidavit as he was served with notice of application on the previous date, the prayer which was granted. Thereafter, the matter was adjourned to 11th June, 2018 and 26th June, 2018 for mention and 3rd September, 2018 for hearing where the Applicant did not appear and the counter affidavit was not filled. The Deputy Registrar was of the view that this evidence proved that the Applicant was aware of the application made by the Respondent and he was given opportunity to file counter affidavit which he decided waive.

I agree with Deputy Registrar that the evidence available proved that the Applicant was aware of the Misc. Application No. 22 of 2018 and he was represented by Advocate. Also he was given leave to file counter affidavit which he decided not to file. Thus, he is the one to blame for the failure to file counter affidavit and to defend his case.

The Applicant submission that the Deputy Registrar had no jurisdiction to determine the Misc. Application No. 22 of 2018 since it contained the issue of lifting of corporate veil has no basis. The reason is that the application before the Deputy Registrar was in respect of execution application, in this area the Deputy Registrar has jurisdiction to determine the matter as it concern the attachment and sale of property

of Director of the Respondent in execution of decree as per Order XLIII
(i) (g) and (h) of the Civil Procedure Code Act, Cap 33.R.E.2019.

Therefore, I find that the Revision Application has no merits and I
dismiss it. No order as to the cost of the suit.



A. E. MWIPOPO
JUDGE
25/06/2021