

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT MOROGORO**

REVISION NO. 20 OF 2020

ALLIANCE ONE TOBACCO TANZANIA LIMITED.....APPLICANT

Versus

MARTIN CHEMBELI GENERAL & 3 OTHERS.....RESPONDENT

JUDGMENT

31st August & 6th September 2021

Rwizile, J.

ALLIANCE ONE TOBACCO TANZANIA LIMITED has lodged the present application for revision against the orders issued by Hon. Mtarania, Deputy Registrar, of this court dated 28th February, 2020, in Execution No. 02 of 2020. The applicant is seeking for revision for the following: -

1. The Honourable Court be pleased to revise and set aside the order of the Deputy Registrar (Hon. Mtarania, DR.) dated 28th February, 2020 in Execution No. 2 of 2020.
2. Cost of this application be provided for;
3. Any other orders or relief Honourable Court may deem fit and just to grant.

The background of the dispute is that the respondents were employed by the applicant on different dates and positions, they were terminated for the reason of retrenchment on 31st July 2017. The respondents not satisfied with termination, filed the matter at CMA. It was decided on their favour which resulted to an application for execution. At execution stage the Deputy Registrar of this court issued an order for the applicant to surrender original motor vehicles' card. Dissatisfied with the Deputy Registrar's order the applicant filed the present application.

The Notice of application is supported by the affidavit of Sabato Musombwa, applicant's Principal Officer. The legal issue for the revision is contained in paragraph 9 of the affidavit in support of the application. The legal issue is as follows: -

1. That the Order of Hon. Deputy Registrar in the Execution Application No. 02 of 2020 was manifestly unreasonable and improper procured.

Both parties to the application were represented whereby Mr. Woiso, Advocate represented the applicant and Mr. Zongwe, Personal Representative represented the respondent.

Hearing of the application proceeded by way of oral submissions. Supporting the application, Mr. Woiso submitted that an execution was stayed, subject to submission of the motor vehicles' original registration cards.

He stated that the motor vehicle being operating on different places in and out of the country, it was difficult to execute the same. Since the original cards are needed on the applicants' business. He was of the view that there was need for staying the execution, because it was not meant to punish the applicant but rather to be sure that the decree will be executed. In supporting his argument, he cited the case of **Rosengers Ltd vs. Saye deposit Centre Ltd**, as cited in Civil Appl No. 98 of 2016 at Pg. 11.

It was further submitted that since the applicant does business in Tanzania and no evidence to prove, her business is expected to close, thus, he prayed other properties to be offered as a security but not cars. It was suggested that the applicant be ordered to issue an informal bank guarantee to prove that she has money as a security. The learned advocate prayer, the order be set aside.

Opposing the application Mr. Zongwe submitted that the point raised by applicant is baseless because stay of execution was not applied for but the court moved itself to do so. Mr. Zongwe said, the case cited is distinguishable because there was not stay of execution application as in the cited case. On such basis the judgment debtor has the duty to comply with the order.

It was further submitted that the informal bank guarantee cannot be a sufficient security as it does not show obligation when needed to pay.

He asked this court to dismiss the application. He was of the view that the best option is the applicant to deposit the money instead of bank guarantee.

In rejoinder the counsel reiterated his submission in chief but argued that an application was filed for extension of time but the disputed order was issued before the application. It was therefore withdrawn. He pressed; this application be granted.

Having considered parties' submissions, this Court is called upon to determine one major issue which is *Whether application at hand is maintainable?*

Having considered parties submissions, Court records including Deputy Registrar's ruling at page 3 of the same ruling, the decree holder's Counsel admitted for being served with the pending revision application. In such circumstance the Deputy Registrar acted wisely by ordering the execution process to halt until determination of the pending application, subject to the condition of surrendering motor vehicle's original card as a security.

It has been gathered that this impugned application was an attempt to enforce the order made by CMA in consolidated Labour Dispute No. CMA/MOR/100/2019, 101, 102 and 103. During pendency of the impugned application, the applicant filed Revision application No. 6 of 2021. The same was determined on 3rd September 2021 by revising it. logically, the impugned application cannot be granted or rejected.

It has been overtaken by events, since there is nothing to execute. The same is therefore struck out. Parties will have to bear own costs.



AK. Rwizile
Judge
06.09. 2021