

THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 288 OF 2021

BETWEEN

MALMO DEVELOPMENT CO. LTD..... APPLICANT

AND

THE LABOUR COMMISSIONER & ANOTHER..... RESPONDENT

RULING

Last order 03/12/2021

Date of Ruling 07/12/2021

B.E.K. Mganga, J

On 14th June 2021, Malmo Development Co. Ltd, the Applicant, filed this application after being aggrieved by the decision of Deputy Registrar in Misc. Application No. 88 of 2021 so that he can be relieved from execution proceedings No. 455 of 2020 by lifting warrant of attachment issued on 11th March 2020. Brief facts leading to the said execution proceedings and this application are that, on 21st September 2020 Labour Officer issued Compliance Order against the applicant to pay his employees TZS 7,700,000/= as salary arrears, the same was not honoured by the applicant. Due to such non-compliance, the Labour officer filed Execution No. 455 of 2020 before this Court and warrant of attachment was issued.

On 29th March 2021, applicant filed Miscellaneous Application No. 88 of 2021 before Deputy Registrar to challenge execution but the same was dismissed. Aggrieved with the decision of Deputy Registrar, applicant filed this application seeking the court to revise the decision of the registrar.

The application is supported by the affidavit of Irene Kisamo applicant's Operation Manager. Opposing the application, the counter affidavit of Sabas Mhina, Senior Labour Officer of the 1st respondent was filed.

When the application was called for hearing, Mr. Joseph Basheka, the personal representative, appeared for and on behalf of the applicant and submitted that, applicant is praying for declaration that compliance order is invalid and that cannot be executed. Mr. Basheka submitted that the compliance order directed the applicant to pay salary to four people who were employees of the applicant. He argued that the compliance order was not served to the applicant. He conceded that, in absence of salary dispute, the compliance order could have not been issued. He argued that, the order was supposed to be served to the applicant in terms of section 46(1) of the Labour Institutions (Cap 300 R.E 2019). The effect of failure to serve the compliance order denied the applicant

right to object, the compliance order and the same was heard exparte on 21st September 2020 because officers of the applicant was outside the region.

Mr. Bashaka submitted further that on the same date of hearing, a compliance order was issued, and execution was filed on 24th September 2020. He argued that a person who is aggrieved by compliance order could object within 30 days to the Labour Commissioner, if the objection is dismissed by the Labour Commissioner, then the employer can appeal to this court in terms of Section 48 (1) of the Labour Institutions (Cap 300 R.E 2019).

Mr. Basheka further submitted that since applicant became aware of the compliance orders on 15th March 2021, she failed to lodge objection to the Labour Commissioner, because they were not served with compliance order. He concluded that it was not proper for Deputy Registrar to continue with execution for unserved compliance order and allow it to be enforced. He thus prayed for the application to be allowed.

On the other hand, Mr. Juma Laizer, a Labour officer, submitted that the respondent followed procedures in issuing the compliance order. He argued that an order to the applicant to appear was issued under Section 45(1) of the Labour Institutions (Cap 300 R.E 2019) as

the applicant was called on 9th September 2020 and that the same was received by the applicant on 10th September 2020 by Josephine Swai for the applicant. He submitted that a total of six people from the applicant's office were called on 14th September 2020 the date they were required to appear contrary to what is submitted on behalf of the applicant. He went on that applicant failed to honor the notice as a result, on 21st September 2020 compliance order was issued. Mr. Juma submitted that the respondents went to the applicant for purpose of serving the compliance order, but they were not allowed to enter the office. Facing that difficulty, respondents went to the street leader's office so that applicant can be served in terms of Section 43 of the Labour Institutions [Cap 300 R.E 2019], but she refused to appear. That, due to the said refusal by the applicant, the hamulate leader for Oysterbay indorsed on the order that applicant refused service.

Mr. Juma, a Labour officer for the respondents submitted further that, after 30 days, Labour Officer filed an application for execution. That, on 6th October 2021 when the court issued summons, applicant refused to accept the said summons but on 9th November 2020, one Martin Mfinanga appeared in Court. Mr. Juma, went on that, in terms of Section 48 of the Labour Institutions [Cap 300 R.E 2019] applicant was

supposed to file objection. He concluded by submitting that applicant intends to delay execution and prayed the application be dismissed.

In rejoinder, Mr. Bashaka submitted that, arguments that applicant refused to accept the compliance order is hearsay as there is no proof of service of the compliance order. He maintained that the compliance order was not served and pray that the application be granted.

This matter cannot detain my mind. I have read Section 46(1) of the Labour Institution Act [Cap 300 R.E 2019], and find that it empowers the Labour Officer to issue compliance order, in a prescribed form, if satisfied that an employer has not complied with a provision of the Labour laws. In terms of, section 46(2)(a) of the said Act, the Labour officer has to serve the compliance order to the employer, any registered trade union with members among the employees affected by the order and each employee affected by the order.

In terms of section 47(1) of Cap 300, supra, the applicant (employer) was supposed to file objection in writing within 30 days of receipt of that order. In terms of section 47(2) of the same Act, applicant was supposed to serve the objection to the labour commissioner, any registered trade union with members among the employees and display a copy of the objection in a prominent place

accessible to the employees affected by the order. But this was not done. It was argued by Mr. Basheka, the personal representative of the applicant that applicant could not file objection as she was not served. This argument was resisted by Mr. Juma who narrated what happened. It is my view that, Mr. Basheka's argument is barren. Even if for the sake of argument, I accept that applicant was not served, applicant was supposed to comply with the provision of section 47(3) of the Labour Institutions Act [cap.300 R.E. 2019]. The said section provides:-

"47(3) The Labour Commissioner, on good cause, may condone a late objection made in terms of subsection (1)".

In the application at hand, there is no proof and it was not submitted that applicant filed application for condonation before the Labour Commissioner as required by the above quoted provision. In other words, applicant did not comply with the law until when an order to attach Motor Vehicle with registration No. T.443 DSH make Toyota IST property of the applicant was issued. It is clear that applicant has filed this application for revision after her application to lift an order for attachment was dismissed.

Again, this application is bound to fail on ground that applicant did not comply with the above cited provision. More so, the application for

revision is misconceived. The only remedy that was available to the applicant is to comply with the provisions of section 47 of the Labour Institutions Act [cap.300 R.E. 2019] and if aggrieved by the decision of the Labour Commissioner, she was supposed to appeal before this court in terms of section 48(1) of Cap. 300, Supra. If at all she was out of time, she was supposed to file application for condonation in terms of section 48(3) of Cap. 300, supra. Applicant has filed this application seeking the court to revise the proceedings in Miscellaneous Application No. 88 of 2021. This, in no doubt is not an appeal. As the applicant filed application for revision, instead of an appeal, I will therefore not consider all arguments advanced by both sides for and against this application as the same is incompetent.

For all what I have pointed hereinabove, I hereby struck out the application for being incompetent.



B.E.K. Mganga
JUDGE
07/12/2021