

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

LABOUR REVISION NO. 169 OF 2022

(From the ruling issued by Hon. Ng'umbu Deputy Registrar in application for Execution No. 163 of 2020 (Hon S. Fimbo, DR) dated 30th May 2022 in Execution No. 247 of 2019

IRON AND STEEL LIMITEDAPPLICANT

VERSUS

MARTIN KUMALIJA AND 117 OTHERSRESPONDENTS

RULING

K. T. R. MTEULE, J

10th October 2022 & 21st October 2022

In this Revision application, the Applicant **IRON AND STEEL LIMITED**, is challenging the ruling of the Deputy Registrar in **Execution No. 247 of 2019**. The Applicant is praying for the Court to call for and examine the record in the said application for execution presided by Hon. S. B. Fimbo, Deputy Registrar for the purpose of satisfying itself as to the correctness, legality and propriety of the proceedings and orders made therein.

The application is supported by a chamber summons and affidavit sworn by Iddrissa Ally, who identified himself as a Senior Officer of the

applicant. The Affidavit contains three grounds of revision listed in paragraph 4 as follows: -

- i) That the Deputy Registrar erred in law by considering a document which was issued during the hearing of the dispute but not annexed with the application for execution.
- ii) That the Deputy Registrar erred in law in granting the application for execution without considering the value of the properties to be attached compared to the decretal amount;
and;
- iii) That the decision claimed to be a decretal breakdown, decision of preliminary objection against that breakdown and the award itself are all registered in 3 different Numbers.

Briefly, the dispute traces its genesis from the Commission for Mediation and Arbitration of Dar es Salaam, Kinondoni in Labour Dispute No. CMA/DSM/KIN/573/11/828 filed by the respondents claiming for reliefs alleged to have resulted from unfair termination. Each respondent was awarded to be paid among others, 12 months remuneration for unfair termination. It happened that after the issuance of award, parties went back to the CMA moving it to assist in the computation of the decretal amount payable to the respondents. Consequently, the award was computed to TZS 166,380,000.00.

During the execution, the applicant raised a concern of not being aware of the decree issued as a result of the computation. The Deputy registrar having noted the presence of a counsel for the respondent in the CMA when the application for computation was being determined, held that the applicants were aware of that computation matter and that they were playing delaying tactics to halt execution. She ordered for execution to proceed. This aggrieved the Applicant who is now seeking revision against the decision of the deputy registrar.

In this revision application, the Applicant was represented by Mr. George Shayo Advocate and Gilbert Ndaskoi Mushi, Advocate, whereas the Respondent was represented by Mr. Juma Nasorro, Advocate. Parties made their submissions to argue the application but before making a decision on merit, a question struck my mind as **to whether this Court is clothed with jurisdiction to hear revision application against the decision of a Registrar on execution.** Parties were called to address the court by a way of oral submission on this concern.

Arguing against the revisability of a decision of a Deputy Registrar, Mr. Nasorro is of the opinion that this court has no jurisdiction to revise a decision of a Deputy Registrar. In his view, revision by all standards and according to law, is normally exercised vertically and not horizontally. He

cited **Rule 28 of the Labour Court Rules, GN No. 106 of 2007** which gives this Court a power on its own motion or upon application to call for record of a matter decided by any responsible person or institution implementing the provisions of the Employment and Labour Relations Act. He is of the view that the responsible person or body mentioned under **Rule 28** cannot be a registrar of the High Court Labour Division as known under section **54 of the Labour Institutions Act, Cap 300 of 2019 R.E.** Mr. Nassoro is of further view that revision is exercised only on a matter decided by a lower Court and goes upward and not horizontally. According to him, the decision for a Registrar is a decision of the High Court, although the registrar is a little bit below the power of the judge of the High Court, yet it does not change the fact that still her decision is normally counted to be a decision of the High Court.

Mr. Nassoro made further reference to some procedural laws guiding revisional powers including the **Magistrates Court Act, Cap 11 of 2019 RE**, where powers of revision is exercised in decision of Primary Court to the District Court or District Court to High Court; the **Civil Procedure Code**, Cap 33 of 2019 R.E, it is a matter from subordinate Court to the High Court and even under the **Land disputes Courts Act Cap 216 of 2019 RE** where revisional power flows with matter from

the land tribunals to the High Court. In his view, all these operates vertically, including the revisional powers of the Court of Appeal, which can only be exercised vertically over matters from the High Court to the Court of Appeal. In his view, if **Rule 28(1) of the Labour Court Rules**, intended to cover Registrar of the High Court, it should have mentioned so.

Mr. Nassoro emphasized that jurisdiction of a Court is a creature of statute. He is of the view that it was not proper for this application to be brought before this Court through the means the applicants opted to use. He submitted that it was not the intention of the drafters to have the decision of the Deputy Registrar subjected to revision on the same way as the decision of the CMA.

In response to Mr. Nassoro's submissions, Mr. George Shayo, Advocate do not agree that this Court lacks jurisdiction to revise the decision of the Deputy Registrar. In his view, Labour laws differ so much from other laws Mr. Nassoro made reference to. According to him, under **section 28 (1) of the Labour Court Rules of 2007**, this Court is conferred with wide jurisdiction to determine any matter and call for decision of any institution concerning labour laws and upon finding the said institution having improperly exercised its jurisdiction, illegally or with material illegality, make necessary orders to revise the decision. In his

view all these constitute revisional powers and it includes the decision of a Deputy Registrar.

Mr. Shayo supplied the case of **George Mapunda and Wema Abdallah vs. DAWASCO, Rev. No. 1 of 2014** (Hon. Rweyemamu J) where it was held that this Division of the High Court has jurisdiction to revise the decision of this Court in the Course of execution of Decrees if moved properly by the parties or *suo motto*. He said, the power is inherent. He supplied another decision, **Baker Hughes Eho Limited vs. Nelson S. Makene and Another Rev. No. 117 of 2018** from this Court with the same position.

As to whether the responsible person cannot be a deputy registrar, Mr. Shayo submitted that it is not correct because the drafters did not intend to be discriminatory by not including the Registrars. In his view, Rule 28 intended any person including the decision of the Deputy Registrar as executing Court.

Regarding the argument that Revision operates vertically, he agreed, but only for the laws Mr. Nassoro cited. In his view, the labour law is crafted differently and that's why it allows revision over a decision of the Deputy Registrar and yet still, vertically a judge has a more superior power than that of the deputy registrar. He emphasized that inherent

power gives power to the judge to revise the decision of the Deputy Registrar since not all the time shall the power of a judge get described in law. He submitted that inherent powers assist a judge to make various decision in proper administration of Justice. He cited an Article titled "Inherent Jurisdiction" by **Qaiser Javed Mian** which explains under which circumstances should inherent power be exercised and stated that it is unlimited. He therefore submitted that this Court has jurisdiction.

Mr. Nassoro made a rejoinder which I shall consider in determining this point of law. But in brief, he challenged the source of the article used by the applicant's counsel on inherent jurisdiction. He refuted that inherent power of the High Court involves revising the decision of the Deputy Registrar as decided in the case of George Mapunda. In his view the jurisdiction which is named by a law cannot be called inherent power. He questioned the applicants standing that they initially relied on **Rule 28 (1) of the Labour Court Rules** but later changed to a new argument that the power is inherent. He called it a self-defeating argument. He urged the court not to rely on the cases of **George Mapunda and Baker Hughes Eho Limited**, as the said decision is not binding upon this Court. He further distinguished these cases on the

ground that, they did not have formal application before the court and that the court did not ask the parties to address it.

Having considered parties submissions, I have noted that the applicant based his application on **Rule 28 of the Labour Court Rules**. For clarity I quote the said provision hereunder:

"28--(1) The Court may, on its own motion or on application by any party or interested person, call for the record of any proceedings which have been decided by any responsible person or body implementing the provisions of the Act and in which no appeal lies or has been taken thereto, and if such responsible person or body appears-

- (a) to have exercised jurisdiction not vested in it by law; or*
- (b) to have failed to exercise jurisdiction so vested; or*
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity; or*
- (d) that there has been an error material to the merits of the subject matter before such responsible person or body involving injustice,*
- (e) the Court may revise the proceedings and make such order as it deems fit"*

Provided that, any party to the proceedings or otherwise likely-to be adversely affected by such revision shall be given an opportunity to be heard.

(2) Any order or direction given by the Court to the responsible person or body from which the proceedings being revised originated shall be complied with forthwith.

From the above quoted provision, the revisable decision is the one originating from a responsible person or body implementing the provisions of the Act. **Does the responsible person or body implementing the provisions of the Acts include the deputy Registrar?** This is a major contentious question amongst the parties. The point of Mr. Nassoro is that, a decision of the deputy registrar is a decision of the High Court and the High Court cannot revise its own decision. Mr. Shayo is not agreeing to this assertion, in his view, the court can exercise its inherent power to revise the decision of the deputy registrar. To resolve this contention, it is necessary to define who is a Deputy Registrar.

A clearer clarification of the status of the deputy registrar in the High Court Labour Division was given after the amendment of **Cap 300** vide the **Written Laws (Miscellaneous Amendments) (No. 2) Act, of 2020, Act No. 3 of 2020**. Section 67 of Act No. 3 added paragraph

(b) to Section 50 (2) of Cap 300, immediately after paragraph (a), which made Deputy Registrars as part of the court constitution. **Section 50**

(1) (b) now reads:-

"50.-(1) There shall be established a Labour Division of the High Court.

(2) The Labour Division of the High Court shall consist of-

(b) such number of Deputy Registrars as the Chief Justice may consider necessary".

Further to **section 67, Section 68 of Act No 3 of 2020** repealed section 54 of Cap 300 and and replaced it with the following section:-

"54. There shall be a Deputy Registrar who shall exercise powers and perform such duties as are conferred under -

(a) section 28 (8) of the Judiciary Administration Act;

(b) Order XLIII of the Civil Procedure Code; and

(c) rules made by the Chief Justice under section 55."

From the above provisions, a Deputy Registrar of the labour Division constitutes the High Court Labour Division and exercises her powers under **Order XLIII of the Civil Procedure Code Cap 33**. Under this circumstances, orders of the Deputy Registrar of the Labour Division do not carry a different status from the decision of registrars in other registries of the High Court as they both derive their powers from the

same legal foundation under **Order XLIII of the CPC**. I therefore do not agree with Mr. Shayo that the decisions of the Deputy Registrar of the Labour court should be treated differently from the decisions of the other registrars.

I have taken note of the decision of Hon. Rweyemamu J in George Mapunda's case and that of **Baker Hughes** both cited by the counsel for the respondent. Although I am not bound to follow that decision, I wish to point out that it was given before the clarification of the role of the Deputy Registrar in the Labour Division. After the clear definition, it is obvious that the Deputy Registrar is performing her duties of execution under **Order XLIII of the CPC** which differentiate it from the decisions envisaged by **Rule 28 of G.N 106 of 2007**. Further the decision of the Deputy Registrar cannot be distinguished from the decisions of other Deputy Registrars since they all derive their execution power from the same law. As well, applications for execution are being registered in the High Court. This being the case, their decisions are decisions of the High Court. A court cannot exercise a revisional power over the same Court. I agree with Mr. Nassoro that revisional powers are exercised only vertically and never horizontally.

I borrow leaf from my sister Hon. Mansoor, J in the case of **National Microfinance Bank PLC versus Victor Modesta Banda, Labour**

Revision No 34 of 2020, dated 31st May 2022. In this case the Hon. Judge deliberated at length on the issue of revisability of the decision of the deputy registrar in execution proceedings. After such lengthy deliberation, she came up with the view that the decision of a Deputy Registrar is not revisable, and she dismissed the application which sought revision of a decision of the Deputy Registrar. I equally follow that direction.

To add on what is already said above, I wish to point out that revisional power over the decision of a Deputy Registrar has already taken by the Court of Appeal. **(See Serenity on the Lake Limited versus Dorcus Martin Nyanda, Civil Revision No. 1 of 2019, Court of Appeal of Tanzania Mwanza, (Unreported); Balazi Abubakar Ibrahim and Another versus Ms. Benandys Limited and Others, Civil Appeal No. 6 of 2015, Court of Appeal of Tanzania, Dar es salaam (Unreported) and Millicom (Tanzania) M.V versus James Alan Russel Bell and Others, Civil Revision No. 3 of 2017, Court of Appeal of Tanzania (Unreported).**

In all the above cases the Court of Appeal revised decisions of Deputy Registrars in execution of decrees. From the above authorities it is obvious that revisional power over the decision of a Deputy Registrar is within the ambit of the Court of Appeal. There can never be a situation

where the High Court can enjoy a concurrent jurisdiction with the Court of Appeal. It is the Court of Appeal which can revise a decision of a High Court. This power goes to the decision of a Deputy Registrar of a High Court because it is a decision of the High Court. It cannot be revised by High Court because it is registered in a Register of the High Court. Further a High Court cannot complete with the Court of Appeal on powers.

From the above analysis, I am not convinced that the decision of a Deputy Registrar in the Labour Division is capable to be revised by the High Court. It is therefore my finding that this court does not have jurisdiction to entertain a matter arising from the decision of a Deputy Registrar in execution of decree.

The Applicant made alternative prayer that shall the court find the decision of Deputy Registrar not revisable to strike out this application with leave to refile. With due respect to the Applicant's counsel, the court can not strike out a matter which it does not have jurisdiction to entertain. The only remedy available is dismissal. Consequently, this Application is dismissed for want of jurisdiction. It is so ordered.

Dated at Dar es Salaam this 21st Day of October, 2022



KATARINA REVOCATI MTEULE

JUDGE

21/10/2022

