

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISC. LABOUR APPLICATION NO. 55 OF 2021**

**BETWEEN**

**NICODEMUS LUCAS MHAGAMA ..... APPLICANT**

**VERSUS**

**TANZANIA ZAMBIA RAILWAYS AUTHORITY (TAZARA) ..... RESPONDENT**

**RULING**

**S.M. MAGHIMBI, J:**

The current application emanates from an Application for Execution No. 482/2019 decided on 26/05/2020. The application is lodged under the provisions of Section 94(1)(a) (b)(d)(e)(f)) of the Employment and Labour Relations Act Cap. 366 Revised Edition 2019, Rule 24 (1)(2)(a)(b)(c)(d)(e)(f), 3(a)(b)(c)(d),24(11)(b) and Rule 48(8) of the Labour Court Rules G.N. No. 106 of 2007. The applicant is moving this court for the following:

1. That this Honourable Court be pleased to make findings that there is a serious question arising in an interpretation of an award against the Respondent named award number CMA/DSM/TEM/408/2018 granted

by an arbitrator on the 30<sup>th</sup> July 2019 and subsequent to that findings order the commission for arbitration to correct the error found in the said award by inserting in the said award the amount which the Applicant was supposed to be awarded by the commission.

2. Any other relief that this Honourable Court may deem fit and just to grant.

The Application has been taken out at the instance of the applicant Nicodemus Lucas Mhagama and is supported by his affidavit dated 29<sup>th</sup> day of January, 2021. The respondent opposed the application by filing a counter affidavit deposed by Ms. Mercy Chitawi, learned advocate who is also the principal officer of the applicant. The application was disposed by way of written submissions. The applicant's submissions were drawn and filed by Mr. Philemon Mutakyamirwa, learned advocate while the respondent's submissions were drawn and filed by Ms. Beatrice Mutembei, learned advocate from the respondent's legal department.

A very brief background of what has brought the applicant before me is that the applicant's employment was terminated by the respondent in 2018. The applicant successfully sued the respondent at the CMA and the respondent was ordered to reinstate the applicant without loss of

remuneration. The applicant then lodged the Execution No. 482 of 2019 in the High Court labour division which was before Hon. W. S. Ng'humbu, Deputy Registrar. On 26<sup>th</sup> day of May 2020, the Deputy Registrar made a finding that the award of the commission did not state the amount to be awarded to the applicant. It is pertinent to note at this point that the ruling of the Deputy Registrar Struck Out the execution application on the ground that the award is sought to be enforced against the government and to that end, it was lodged contrary to Order XXI Rule 2A of the Civil Procedure Code, Cap. 33 R.E 2002 (then) ("CPC"). The Hon. Deputy Registrar particularly faulted the mode of execution that was preferred by the applicant on the ground that satisfaction of decreed against the Government particularly excludes the application of the provisions of Rules 3-110 of the Order XXI of the CPC. Eventually the Hon. Deputy Registrar struck out the application for being incompetent. Surprisingly, the applicant has lodged this application from the Execution No. 482/2019 which was struck out. In this application, the issues raised by the applicant are that:

- i. That the arbitrator erred in law and in facts for failure to specify the amount of money on which the applicant ought to be paid from the

date of the determination of employment to the date of the award.

Hence the Court should interpret the decision of the commission.

Having considered the records of this application, I am aware of the fact that the application cited by the applicant, Execution No. 482/2019 was struck out. The first question is whether the applicant can bring an application referring to an Execution Application that has been struck out hence there is no pending execution before this Court. However, since the applicant is seeking interpretation of the CMA award, I will proceed to determine the matter.

In her reply, submissions Ms. Mutembei pointed out that under paragraph 6 of the Respondent's counter affidavit, the ruling delivered by Hon Arbitrator Mikidadi on 20<sup>th</sup> October, 2020 was proper. The Arbitrator struck out the Applicant's application as observed in page 5 and 6 because it had wrong citation of enabling provision hence the applicant failed to move the commission. The Applicant cited rule 25(1) of Labour Institution (Mediation and Arbitration) Rules, 2007 G.N No 64 which deals with parties names being incorrect and not error in an award.

I am in agreement with the Arbitrator in finding that even if the commission was properly moved, the reason for the application for

execution to be struck out was because it was incompetent for not being proper before the court and not just failure of the award to state the amount awarded. This is what had also caught my attention, the issue that the award was ambiguous was not at all the reason why the execution application was struck out, although in his Ruling, the Honorable DR mentioned the substance of the said award commenting that the same was inexecutable.

The above notwithstanding, I have also asked myself if, there being a ruling of the CMA on the same issue of interpretation of an award, the execution having been struck out, was it proper for the applicant to have lodged yet another application in this court?

Coming to the issue raised by the applicant, that the arbitrator erred in law and in facts for failure to specify the amount of money on which the applicant ought to be paid from the date of the determination of employment to the date of the award. He hence moved this Court to interpret the decision of the commission. I find that the application is off context because there is nothing ambiguous about the award. In his CMA Form No. 1 the applicant prayed for and was granted an order for

reinstatement without loss of remuneration. At the last page of his award, the arbitrator wrote:

*"Hivyo ni uamuzi wa Tume hii kwa mujibu wa kifungu cha 40(1)(a) cha Sheria ya Ajira na Mahusiano Kazini Na. 6/2004 kuwa, mlalamikaji arudishwe kazini na kulipwa stahiki zake zote tokea ya kuachishwa kazi isivyo halali"*

The award is clear that the applicant should be reinstated to his employment pursuant to Section 40(1)(a) of the Act. The sub-section (a) of Section 40(1) provides:

*"to reinstate the employee from the date the employee was terminated without loss of remuneration during the period that the employee was absent from work due to the unfair termination;"*

The Section requires the employer to reinstate the employee without loss of remuneration during the employee was absent from work due to unfair termination, it means the amount cannot be quantified prior to the order of reinstatement being executed because that will be the cutoff point on where the amount of remuneration to be paid will end before the employee resumed work and continued to be paid his monthly salary.

Therefore there was nothing to be clarified; it is the applicant who is complicating the issue.

This application is therefore unnecessary, all am seeing that the applicant is just taking rounds instead of refilling the struck out application and have the reinstatement order executed. What the applicant ought to have done is refilling a proper application for execution seeking for a proper mode of execution of the award as the award is executable, by reinstatement and awarding his compensation from the time of termination to the date of reinstatement. Having said that, this application is hereby dismissed for want of merits.

Dated at Dar es Salaam this 21<sup>st</sup> day of March, 2022.



  
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**S.M MAGHIMBI**  
**JUDGE**