

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
MISCELLANEOUS APPLICATION NO. 234 OF 2022

SHABANI IBRAHIM APPLICANT

VERSUS

CHANG CHUN INTERNATIONAL CO. LTD..... RESPONDENT

RULING

Date of Last Order:02/11/2022

Date of Ruling: 16/11/2022

B.E.K. Mganga, J.

Facts of this application in brief are that, on 21st November 2020, a year ago, applicant was awarded by the Commission for Mediation and Arbitration (CMA) to be paid TZS 3,600,000/= by the respondent. The award was to the effect that the said amount was payable within 14 days. It happened that respondent did not comply with the order, as a result, on 23rd February 2021, applicant filed Execution Application No. 53 of 2021 before this court praying to attach and sell Motor vehicle No. T.967 DNQ make Toyota Sienta property of the respondent to enforce the said award. On 20th October 2021, the Deputy Registrar (Hon. W.S.

Ng'humbu) as the executing officer, issued an order of attachment and sell of the said motor vehicle. But the court broker who was appointed to attach the said motor vehicle reported to the court that the said motor vehicle is untraceable. Due to that fact, on 27th January 2022, applicant amended form No. CC10 on mode of execution praying that computers, laptops, air conditioners in the office of the respondent be attached and sold. That also did not materialize because respondent has moved from her previous office at Kijitonyama to unknown place.

On 21st March 2022, applicant prayed directors of the respondent be arrested. Applicant informed the executing officer that directors of the respondent are Omari Shaban Malisa and Zhao Zhen Zhi. On 8th June 2022, the executing officer found herself having no powers to issue an order of arrest and detention of the aforementioned directors of the respondent, as a result, the application was struck out. On 22nd June 2022, applicant filed this application seeking the court to summon the aforementioned directors to appear and show cause why the aforementioned persons should not be arrested and detained as civil prisoners. In his affidavit in support of the application, applicant deponed that other alternative of execution has failed.

Resisting the application, respondent filed both the notice of opposition and the counter affidavit of Fang Yu, the principal officer of the respondent. In his counter affidavit, Fang Yu deponed that respondent has filed an application to set aside the exparte award and that applicant has not met criteria for the orders prayed for to be issued.

When the application was called on for hearing, Mr. Francis Munuo, Advocate appeared and argued for and on behalf of the applicant while Mr. Mathias Kabengwe, Advocate appeared and argued for and on behalf of the respondent.

Submitting in favour of the application, Mr. Munuo argued that Applicant is praying that Omari Shaban Malisa and Zhao Zhen zhi, the Directors of the respondent be summoned to appear and show cause why they should not be arrested and detained as civil prisoners. He went on that, there is a pending Execution No. 53 of 2021 relating to CMA award in which respondent was ordered to pay TZS.3,600,000/= in Labour Dispute No. CMA/DSM/KIN/364/2020/196. Counsel went on that, there is no revision against the said award. He concluded that Applicant is ready to comply with conditions of the law so that directors of the respondent can be arrested and detained as civil prisoners.

Resisting the application, Mr. Kabengwe, learned advocate for the respondent submitted that in the said labour dispute, respondent was not summoned to appear at CMA. He submitted further that on 17th August 2022, Respondent filed an application to set aside the exparte award because she became aware of existence of the said award and execution application against her on 05th August 2022. Counsel for the respondent conceded in his submissions that though they have been appearing in court with the applicant, they have not served the applicant with the said application to set aside an exparte award. He therefore prayed that this application be stayed.

In rejoinder, Mr. Munuo, counsel for the applicant submitted that two months has passed without respondent serving the applicant with an application to set aside the exparte award despite the fact that parties have been appearing before this court. He submitted further that; applicant has not filed an application for stay of this application. He concluded that Respondent is playing a delay tactic to ensure that the award cannot be executed which is why she has failed even to serve the applicant with the alleged application to set aside the exparte award and prayed the application be granted.

I have examined court record in execution application No. 53 of 2021 and considered submissions of the parties in this application. It is on record that on 28th January 2022, the executing officer signed Form No. 6 notifying the respondent that applicant has filed execution No. 53 of 2021 and that they should appear on 28th February 2022 to show cause why execution should not be granted. The said notice was returned with endorsement that on 23rd February 2022 One Juma Mkunguna, the HR of the respondent refused to sign and or to be served. In paragraph 7 of his counter affidavit opposing this application, Fang Yu deponed that on 5th August 2022 respondent filed at CMA an application to set aside an exparte award. Respondent attached to the counter affidavit an application she alleges was filed at CMA to set aside the said exparte award. In paragraph 3.3 of the affidavit of Fang Yu allegedly filed at CMA to set aside exparte award, he deponed that on 5th August 2022 the herein applicant went to his office with a view of serving him with this application and that he (Fang Yu) directed applicant to serve the application to Kanywanyi, Mbakileki, Mtaki and Nditi Advocates. I have examined the affidavit of Fang Yu allegedly filed at CMA to set aside an exparte award and find that it appears that it was

filed at CMA on 17th August 2022 and that the deponent deponed the said affidavit on 16th August 2022. Therefore, it is not true that respondent filed at CMA an application to set aside exparte award on 5th August 2022 as alleged by Fang Yu in the counter affidavit resisting this application.

I agree with counsel for the applicant that respondent is praying delay tactics, which is why, she has not served the applicant with the application to set aside the said exparte award. Parties have been appearing before this court but no disclosure that there is a pending application at CMA. For example, on 18th August 2022, 5th September 2022, 20th September 2022, 5th October 2022, 19th October 2022, the dates parties were appearing before this court, the said application at CMA was never served to the applicant. At all that period, respondent was being represented by Mr. Mathias Kabengwe, learned advocate. Reasons for not serving the applicant with that application is not disclosed. Worse, even on the date of hearing of this application on 26th October 2022, Mr. Mathias Kabengwe, conceded that respondent has not served the applicant with the said application. It is my view, that existence of the said application at CMA may be doubtful, which is why,

respondent has failed to serve the herein applicant. Failure of the respondent to serve the applicant, is evidence that respondent is praying a foul pray with the view of delaying execution. Again, it is unprofessional for counsel for the respondent for his failure to disclosed to the court at the earliest possible and or serve the applicant with the application if at all there is a pending application at CMA. But whatever the case, presence of the said application at CMA without an application before the court to stay execution, that application becomes meaningless and cannot be a ground for this court to halt these proceedings. I therefore hold that the prayer by counsel for the respondent for stay of this application is misconceived.

It is my further opinion that, without summoning Omari Shaban Malisa and Zhao Zhen Zhi, who are the directors of the respondent, the CMA award cannot be executed, and it will remain as an empty egg unable to give life to chicken. The said exparte award an order that need to be enforced like any court order. I have no better words to use to emphasize what was held in the case of **TBL v. Edson Dhobe**, Miscellaneous Civil Application No. 96 of 2006, as to why court orders should be respected. In **Dhobe's case** (supra) it was held: -

"Court orders should be respected and complied with. Courts should not condone such failures, to do so is to set bad precedent and invite chaos"

For the foregoing, I allow the application and order, in terms of Rule 35(1) of the Civil Procedure Code [Cap. 33 R.E. 2019] that the said Omari Shaban Malisa and Zhao Zhen Zhi, directors of the respondent be summoned to appear before the court and show cause why they should not be committed to prison.

Dated in Dar es Salaam on this 16th November 2022.



B. E. K. Mganga
JUDGE

Ruling delivered on this 16th November 2022 in chambers in the presence of Francis Munuo, Advocate for Applicant and Mathias Kabengwe, Advocate for the respondent.



B. E. K. Mganga
JUDGE