

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

REVISION APPLICATION NO. 363 OF 2022

MASHAKA MOYO & 4 OTHERS APPLICANTS

VERSUS

MOFED TANZANIA LIMITED RESPONDENT

EXPARTE JUDGMENT

*Date of last order: 17/11/2022
Date of judgment: 24/11/2022*

B. E. K. Mganga, J.

Facts of this application are that; applicants were employees of the respondent. It happened that respondent terminated employment of the applicants, as a result, applicants filed a dispute at CMA claiming that they were unfairly terminated. On 25th September 2015, having heard evidence and submissions of both sides, Hon. Stanlaus H, arbitrator, issued an award that termination of the applicants was unfair and ordered the respondent to reengage the applicants. The said order of re-engagement was not complied with by the respondent. On 31st August 2017, almost two

years thereafter, applicants filed execution application No. 391 of 2017 praying to be re-engaged. On 8th February 2018, the parties being represented by Abdallah Kazungu learned advocate for the applicant and Regina Kiumba, learned advocate for the respondent appeared before Hon. S.J. Kainda, Deputy Registrar, the executing officer. As to what was submitted by the parties, the court record shows as hereunder:-

Mr. Abdallah: we pray execution to proceed.

Ms. Kiumba: my client doesn't intend to re-engage the decree holder instead, they are prepared to pay 12 months' salary in lieu of re-engagement. This is our stand since 2015.

Mr. Kazungu: we pray section 40(3) of Labour Relations Act(sic) be invoked.

Court: Let the calculations be made by CMA(Commission for Mediation and Arbitration)".

Based on the above quoted order, on 2nd May 2018, Hon. Stanslaus H, Arbitrator, who issued the award, made calculations that applicants are entitled to be paid a total of TZS 291,180,716/= being twelve months' salary and 56 months' salary from the date of termination to the date calculations were made. On 29th May 2018, applicant filed CC10 praying to attach and sale Machine make Sany with registration No. T827 DLD. Execution was not effected. On 4th December 2020, Mr. Fredrick Massawe,

learned counsel for the respondent prayed the application be withdrawn on ground that judgment debtor's business name changed but the prayer was dismissed by the executing officer on 23rd February 2021 for want of merit because the executing officer found himself lacking jurisdiction to alter the award. Respondent prayed for stay of execution but the executing officer ordered her to deposit security for an application for stay to be granted of which she failed to comply. Having failed to comply with the order of depositing security, on 5th May 2021, C.M Tengwa, DR, the executing officer ordered execution to proceed as prayed. Hon. C.M. Tengwa was thereafter transferred and the file was transferred to Hon. E.M. Kassian, Deputy Registrar.

On 20th January 2022 when the application was called on for hearing before Hon. E.m. Kassian, DR, the executing officer, Ms. . Regina Kiumba, submitted that respondent is objecting attachment and sale of the aforementioned machine with Registration No. T827 DLD on ground that it does not belong to the respondent/ decree debtor, rather, it belongs to Zambia Cargo and Logistics Co. Ltd and that initially they asked the court (C.M Tengwa, DR) to change the name of the decree debtor from MOFED

Tanzania Ltd to Zambia Cargo and Logistics Co. Ltd but the court declined. Ashery Stanley, counsel for the applicant submitted before the executing officer that Zambia Cargo and Logistic Co. Ltd did not file objection for the said machine to be attached and sold. On 9th February 2022, having heard submissions of both sides, Hon. E.M. Kassian, DR, the executing officer, dismissed the application by the respondent for being meritless and issued a proclamation of sale of the said property and on the same date issued a notice to the respondent to show cause as why the said property should not be attached and sold.

In a dramaturgical turn, on 24th May 2022, Rachel Madumba, the principal officer of Zambia Cargo and logistic Company Limited filed an affidavit stating *inter-alia* that the said machine is not a property of the respondent, rather, it belongs to Zambia Cargo and Logistic Company Limited and that the same is mortgaged with Stanbic bank. She deponed also that the said Zambia Cargo and Logistic Company Limited was not a party to the proceedings at CMA and that at the time calculation was made at CMA, respondent had changed name into Zambia Cargo and Logistic Company Limited who was not heard at CMA. Mashaka Moyo, on behalf of

the herein applicants, filed a counter affidavit in which he deponed *inter-alia* that, change of name does not do away liability of the respondent and that Zambia Cargo and Logistic Company Limited has hijacked the proceedings. Having heard submissions of the parties, on 26th September 2022, Hon. E.M. Kassian issued a ruling noting that Hon. Kainda, DR ordered calculations be made but the same was done without hearing the decree debtor, as a result, applicants were awarded to be paid TZS 291,180,716/= . The executing officer halted the order of attachment and sale of the aforementioned property and ordered recalculation be done involving the parties.

Aggrieved by the ruling and order of recalculation, applicant filed this application advancing three grounds namely:-

- 1. That the presiding Deputy Registrar erred in law and fact by exercising revisional jurisdiction not vested on him.*
- 2. That the presiding Registrar erred in law and fact by ordering re-calculation to be made at the Commission for Mediation and Arbitration.*
- 3. That the presiding Registrar erred in law and facts by holding that there was application filed by the respondent challenging execution.*

On 3rd November 2022 when the application was called on for orders, Mr. Ceasor Kabissa, advocate appeared for the applicant while Ms. Irene

Mchau, advocate appeared for the respondent. By that time, respondent had not filed the counter affidavit, as a result, the application was scheduled for hearing on 17th November 2022 because Ms. Mchau promised that she will file the counter affidavit before that date. When the application was called on for hearing on 17th November 2022, only Mr. Kabissa, advocate entered appearance for the applicant. On a dismay, one Eliezer A. Msuya, a legal officer from Trustmark Attorney, filed a letter seeking adjournment that Ms. Regina A. Kiumba, advocate who is handling this application is sick. Mr. Kabissa objected the prayer correctly in my view and prayed the matter to proceed ex parte. I agreed with Mr. Kabissa, advocate and ordered the matter to proceed ex parte on the same date for two reasons. One, in the notice of representation that was filed in court on 14th November 2022, respondent indicated that she will be represented by (i) Elisa Abel Msuya, (ii) Regina Kiumba, (iii) Irene Mchau, and (iv) Ndehurio Ndesamburo advocates working with M/s Trustmark Attorneys. There was no reason advanced as to why other advocates could not enter appearance. Two; it was a disrespect to the court for advocates from Trustmark to allow a legal officer to seek for adjournment yet requiring the said legal officer and all attorneys in Trustmark Attorneys to be trusted. As

a cordial advise, if that trend does not stop, very soon Trustmark Attorneys will lose trust from the public and courts will be forced to act including making orders that may adversely affect their clients.

Back to the application at hand, submitting on the merit of the application, Mr. Kabissa learned advocate submitted generally to the aforementioned three grounds that the Deputy Registrar exercised revisional jurisdiction that was not vested on him. He went on that, on 08th February 2018, Deputy Registrar, ordered calculation of the amount payable to the applicants be made by the arbitrator. He went on that on 02nd May 2018, Hon. Stanslaus H, arbitrator, made calculations because respondent refused to re-engage the applicants. After calculations, applicants filed Execution No. 391 of 2017. Respondent was notified presence of Execution No. 391 of 2017 on 08th May 2018 and on 24th March 2022 filed affidavit to show cause that execution should not proceed because she has filed Misc. Application No. 64 of 2022 before Hon. Maghimbi, J. On 22nd July 2022, Maghimbi, J, struck out the application by the respondent and that respondent did not file any other application in Court.

Counsel for the applicants submitted further that, on 26th September 2022, the Deputy Registrar halted Execution Application No. 391 of 2017 so that re-calculation can be made while calculation was already done as per order of Kainda, Deputy Registrar in the Ruling dated 01st February 2018. Counsel for the applicant strongly submitted that Hon. Kassian, Deputy Registrar, had no power to order recalculations. He went on that, if respondent was aggrieved with calculations done by Hon. Stanslaus on 02nd May 2018, she was supposed to file revision but no revision was filed which means parties were comfortable with calculations done. He argued that it was not proper for the respondent to pray for recalculation while there was no revision application and that parties were bound by the decision by Kainda, Deputy Registrar, and cited the case of ***Karori Chogoro v. Waitihache Merengo***, Civil Appeal No. 164 of 2018 to the position that court orders must be respected. Counsel strongly submitted that the Deputy Registrar had no jurisdiction to order calculation while calculation has already been done by the order of his fellow Deputy Registrar. Counsel for the applicants concluded that Deputy Registrar was functus officio and prayed the order of the Deputy Registrar dated 26th September 2022 be revised, quashed, and set aside.

I have carefully examined the court record and considered submissions made on behalf of the applicants and find that the main issue in my view, is whether, the executing officer had jurisdiction to order recalculation or not which was already done in compliance of the predecessor executing officer. From the record, it is clear that, an order of calculation of the amount applicants are entitled to, was made on 2nd May 2018, by Hon. Stanslaus H, Arbitrator who issued the initial award after the order of Hon. Kainda, Deputy Registrar, the executing officer. I agree with Kabissa, learned advocate for the applicants that if respondent was aggrieved by the calculations that were made, she was supposed to file an application for revision before this court and not to pray for recalculation. In short, the Deputy Registrar erred in ordering recalculations. More so, he vacated his order of proclamation of sale of the property dated 9th February 2022 after finding that the application by the respondent was meritless. As if that was not enough, the claim that calculations were made at the time respondent had changed the name to Zambia Cargo and Logistic Company Limited and that Zambia Cargo and Logistic Company Limited did not participate in that calculation was already decided by the same Court (Hon. C.M Tengwa, DR) on 23rd February 2021. In his Ruling,

Hon. C.M, Tengwa, DR, held that he had no jurisdiction to alter the award by changing the name of the decree debtor. In my view, change of name of the Decree debtor is inconsequential to the decree. So long as the property is the decree debtor who has changed the name, that property is liable to be attached and sold. Therefore, the Deputy Registrar had no power to vacate from the Ruling and order of his predecessor executing officers. He was functus officio.

If the registrar thought that there was valid reason for recalculations, of which in my view there was none, then, he could have done so himself because the executing officer had that power as it was held by the Court of Appeal in the case of [*Hassan Twaib Ngonyani vs TAZAMA Pipe Line Limited*](#), Civil Appeal No. 2011 of 2018 [2022] TZCA 88 it was held that the executing officer has jurisdiction. In [*Ngonyani's case*](#) (supra), the Court of Appeal in allowing the appeal held *inter-alia*:-

"...the executing officer enjoys exclusive jurisdiction to deal with any question relating to execution, discharge and satisfaction of the decree. Where the resolution of any of the questions requires ascertainment of controversial factual issues, the executing court is entitled, under section 38(2) of the CPC even to convert execution proceedings into a suit. In our view, therefore, in so long as the claim is captured by the decree, whether expressly or

constructively, it is within the power of the executing court to compute the same."

In [**Ngonyani's case**](#) (supra) the Court of Appeal also quoted its earlier decision in the case of ***Karata Ernest and Others V. The Attorney General***, Civil Revision No. 10 of 2010 (unreported), wherein it held:-

" Although ordinarily the trial court has a duty to determine the quantum which the judgment debtor is bound to pay under the decree, where it has left out that question open for consideration subsequently, the executing court has jurisdiction to determine the quantum... "

From the facts of this application, it is clear in my mind that respondent is making all efforts to ensure that the decree cannot be enforced. Courts must always ensure that its orders are complied with. In fact, in the case of [**Karori Chogoro vs Waitihache Merengo**](#), Civil Appeal No. 164 of 2018 [2022] TZCA 83, the Court of Appeal held *inter-alia*:-

"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. This should not be allowed to occur..."

In the application at hand, as pointed above, respondent is trying to ensure that the award cannot be executed. In that case, the order of CMA

will remain as a nothing. This Court is there to ensure that, such should not happen. The executing officer should exercise his constitutional mandate and other laws otherwise, this court will lose trust from the public. We are not prepared to see that happening.

For all said hereinabove, I hereby allow this application and order that execution should proceed.

Dated in Dar es Salaam on this 24th November 2022.



B. E. K. Mganga
JUDGE

Judgment delivered on this 24th November 2022 in chambers in the presence of Ceasor Kabissa, Advocate for the applicants and Abel Msuya, Advocate for the Respondent.



B. E. K. Mganga
JUDGE