

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

MISCELLANEOUS APPLICATION NO. 327 OF 2022

JOHN BARTON SIMCHAMBA..... APPLICANT

VERSUS

KENYA KAZI SECURITY (T) LTD..... RESPONDENT

EXPARTE-RULING

*Date of last Order: 24/10/2022
Date of Ruling: 11/11/2022*

B. E. K. Mganga, J.

Facts of this application albeit briefly are that John Barton **Simchamba**, the abovementioned applicant was employed by Kenya Kazi Security (T) Ltd, the abovementioned respondent as security guard. It happened that applicant's employment was terminated by the respondent. Aggrieved with termination, applicant filed the dispute before the Commission for Mediation and Arbitration(CMA) for unfair termination. The dispute was heard exparte and upon conclusion of hearing, arbitrator issued an award in favour of the applicant that termination was unfair and awarded him to be paid TZS 100,000,000/=

as compensation with a monthly increment of 2% from the date of the award namely 7th December 2019 to full payment of compensation.

Respondent was discontented with the award, as a result, she filed Revision application No. 133 of 2020 before this court. On 2nd July 2021, this court (Hon. Z.A. Maruma, J) delivered its judgment that:-

"...Considering all these above, I find that termination of the applicant was unfair. Therefore, under section 40(c) of the ELRA GN. No. 6 of 2004, I order compensation of 60 months' remuneration, one month salary in lieu of termination severance pay for 7 years and all unpaid salaries, unpaid annual leave/s and repatriation costs from Dar es Salaam to Mbeya based on contract terms and policies of KK Security Limited."

On 31st August 2022, applicant filed this application seeking interpretation of the aforementioned judgment of this court. Respondents though served did not file the counter affidavit.

When the application was called on for hearing, Mr. Simchanba submitted that initially he filed Execution No. 627 of 2019 but the same was struck out by Hon. E.M. Kassian (Deputy Registrar) on the ground that an application should be made before a judge for interpretation of the judgment of Hon. Maruma J. he went on that based on the foregoing, on 31st August 2022, he filed this application. During his submissions he conceded that in the application at hand he attached the judgment of Hon. Z.A. Maruma, J and Ruling by Hon. S.B. Fimbo,

Deputy Registrar. He conceded further that the Ruling of Hon. S.B. Fimbo relates to Execution No. 363 of 2021 also seeking interpretation of the judgment of Z.A. Maruma J, dated 2nd July 2021. He conceded further that it is the same judgment that Hon. E.M. Kassian(DR) issued a ruling that applicant should seek interpretation. That was not over because applicant conceded that in Execution No. 627 of 2019, he was executing CMA that was revised by Z.A. Maruma J. Applicant conceded that he filed Execution No. 363 of 2021 to execute the decree issued by Hon. Z.A. Maruma, J and that there was only a single dispute and CMA award between the parties.

Again, in his submissions, applicant conceded that on 9th September 2022, he filed Execution No. 360 of 2022 that is also before Hon. E.M. Kassian (Deputy Registrar) seeking to execute CMA award that relates also to Execution No. 627 of 2019, Execution No. 363 of 2021 and Miscellaneous application No. 256 of 2022 that was scheduled for Ruling before me. In fact, he conceded that Execution No. 627 of 2019, 363 of 2022 and 360 of 2022 all originate from the same CMA award that was revised by Z. A. Maruma, J in Revision application No. 133 of 2020. Applicant conceded further that in both Miscellaneous application No. 256 of 2022 and this Miscellaneous application No. 327

of 2022 he is seeking the court to interpret the judgment of Z.A. Maruma J relating to Revision Application No. 133 of 2020. In his submissions, applicant was candid enough to submit that the aforementioned miscellaneous applications are different and they are unrelated.

From submissions of the applicant as he conceded, in this application he is seeking to interpret the Judgment of this court (Z.A. Maruma, J) issued on 2nd July 2021 in Revision Application No. 133 of 2020 as it is in Miscellaneous application No. 256 of 2022 that is scheduled for ruling today. Without wasting my time, I hold that the matter is subjudice before the court hence this application is liable to be dismissed. It is my further view that applicant has been filing several applications before the court in abuse of court process. He should therefore stop forthwith otherwise, the court will in future order him to pay cost.

It is undisputed that on 9th September, applicant filed execution application No. 360 of 2022 praying to execute CMA award in which he was awarded to be paid TZS 100,000,000/= as compensation with a monthly increment of 2% from the date of the award namely 7th December 2019 to full payment of compensation while the said award

has been already revised by this Court (Z.A. Maruma, J). It is my view that in presence of the decree of this court (Z.A. Maruma, J), applicant was not supposed to apply for execution of CMA award in execution No. 360 of 2022 which is why I have held that applicant has been filing these applications in abuse of court process. He was supposed to file and application to execute the decree of this court. I can safely conclude as I have done hereinabove that, applicant filed Execution application No. 360 of 2022 to execute CMA award in abuse of court process as he was aware that the said award was revised by this court by Hon. Z.A. Maruma, J. Since applicant filed execution application No. 360 of 2022 on 9th September 2022 while aware also that he had filed execution application No. 363 of 2021 praying to enforce this court's decree (Z.A. Maruma, J) and further being aware that he was required to file an application for interpretation of this court's judgment(Z.A. Maruma, J) and having filed that application on 1st July 2022, he was precluded from filing execution application No. 360 of 2022. He cannot be allowed to ride to horses at once while knowingly that one of the horses does not belong to him, meaning that the CMA award was no longer existing as it was revised by this court. As pointed hereinabove, if he was aggrieved by the decision of this court, the recourse was to appeal before the

Court of appeal. That said and done, I order that execution application No. 360 of 2022 should be struck out.

For the foregoing, I hereby dismiss this application for being subjudice.

Dated in Dar es Salaam on this 11th November 2022.



B. E. K. Mganga
JUDGE

Ruling delivered on this 11th November 2022 in chambers in the presence of John Barton Simchamba, Applicant and Hassan Mwemba, Advocate for the Respondent.



B. E. K. Mganga
JUDGE