

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

MISCELLANEOUS APPLICATION NO. 143 OF 2022

BONIPHACE J. MJENJWA & 13 OTHERS APPLICANTS

VERSUS

TANZANIA TELECOMMUNICATION COMPANY LTDRESPONDENT

RULING

K.T.R. Mteule, Judge

28th November 2022

The applicants filed this application seeking for this court to call for the record of Execution No 26 of 2009 and vacate the orders which closed the execution proceedings thereof for execution was already done where the applicants were getting paid interest from the decretal sum and there was no reason for the closure of the matter by the deputy registrar.

The application is supported by a joint affidavit of the 14 applicants. According to the affidavit, the decision which was subject of execution (annexure BM 1) was issued in 1999 over a dispute which arose in 1997. The applicants filed execution Application No. 26 of 2009. Execution was



ordered to the extent of issuance of garnishee order absolute which was later stayed pending the respondent's application in the High Court main registry. Several matters were lodged by the respondent in the High Court and in Court of Appeal in a bid to turn the decree in her favour but all turned to be unsuccessful.

When there was nothing remaining in any court, the applicants came back to proceed with execution vide a letter written by the applicant's counsel Mr. Msemwa from DAVOS Attorney seeking for the court directions on way forward after the striking out of the application before the High Court Main Registry.

On 3rd July 2018 when the execution was called for hearing following the letter by the applicant's counsel, a debate arose amongst the parties as to whether the application was properly before the court. Mr. Msemwa having asked the court to give direction in respect of garnishee order already issued to the NBC Bank in favour of the Applicants, Mr. Malata who appeared for the Attorney General questioned the way the applicants moved the court by a letter instead of formal application. Mr. Malata further raised an argument that the record did not show which award was



being executed by this court. He believed that the respective award was set aside.

The deputy registrar made a finding that the application was not properly before the court. It was the view of the Deputy Registrar that there was no any case in this court concerning the award. He advised the counsels for the parties to make an application to properly move the court to keep the record clear. He directed that all the documents related to the case must be attached with the said application to enable the court to have proper record.

The applicants have lodged this application praying for an order to vacate the order of the deputy registrar and restore the application for execution.

The application was heard by oral submissions. The applicant is represented by Mr. Hemedi Omari Kimwaga, personal representative for the applicant. He submitted that the applicants are praying for the Court to vacate the order that closed the Application for Execution No. 26 of 2009.

Mr. Hemedi submitted that while the Registrar was closing the file, he thought there was no any other case in the Court of Appeal, High Court or in the CMA. In his view, the closure of the matter was against justice.

Mr. Hemedi submitted that on 30th January 2012 there was an application before this Court which sought for stay of execution in Execution No. 26 of 2009 pending application in the High Court which was Miscellaneous Application No. 2 of 2010 and that application was dismissed.

He stated further that the applicants filed another application, Miscellaneous Application No. 95 of 2016 which was decided by Hon. Kihyo J, on 13/12/2017 where the application was struck out. In his view, basically Registrar Mohamed R. Gwae agreed with the application by TTCL and stayed the execution by restraining the decree holders from being paid pending decision of the High Court in Miscellaneous Application No. 2 of 2010 and that Miscellaneous Application No. 95 of 2016. He stated further that since the two applications were finalized, it was not proper for Hon. Mrangu to close the application for execution and there was no reasonable cause to close the application for execution.

Mr. Hemedi therefore prayed for the Court to restore the Execution application since the respondent has already complied with the Court order to deposit the matter in FDR account and therefore there is no any other case which is challenging the decree which resulted to that execution. In his view, the sought order will enable the applicants to benefit their decree.

The respondent was represented by Joyce Yonas S.A and Maurine Mmary S.A. Ms. Joyce submitted that this application is not properly brought. She challenged the application of Rule 35(1) and (2) and Rule 36 (2) of G.N No. 106 of 2007 in bringing the application. In her view, Rule 35(1) applies when the matter was postponed sine die. Since this matter was closed, the application is not proper because Rule 35(1) requires re-enrolment of a matter which was adjourned sine die.

Ms. Joyce secondly submitted that the application for re-enrolment must be filed before Registrar but this one is before the Judge instead of Registrar as per Rule 36, when the matter is struck out for non-appearance. In her view, this situation is not covered in this matter because the application was not struck out.

Ms. Joyce raised an issue of limitation of time and submitted that the applicant is praying for restoration of Application for Execution No. 26 of 2009 and it is brought in Court on 22/4/2022. According to her, the application is out of time although the Rule does not provide time limit, Rule 55 of the Labour Court Rules allow use of other laws. She therefore prayed to invoke **The Law of Limitation Act Cap 89 R.E of 2019 1st schedule Part 1, item 21** which deal with applications, and provides for

60 days limitation of time. In her view, the application is long overdue and out of time.

Mr. Hemedi made a rejoinder in which he challenged the respondent's submissions on the ground that the submission raised points of law which ought to have been raised by preliminary objection.

I have gone through the parties' submissions and their affidavit and counter affidavit as well as the record of **Execution Application No 26 of 2009** which is sought to be restored. According to the record, the closure of the application was done due to uncertain situations which raised doubt to the registrar who felt that he was not equipped with sufficient information to enable him to make informed decision. One of the matters which was in question was the nature of the award which was subject of execution. According to the Deputy Registrar, it was not known as to what award was being executed. This was due to what Mr. Malata PSA alleged that the said award was set aside.

The Deputy Registrar closed the matter and left an opening to the applicants to move the court by proper application which will enable the court to proceed with the execution with sufficient information furnished

for the record. The applicants have made this application to request restoration basing on the laws which in my view do not fit the application. In my view, what the applicants were supposed to do is to bring an application pursuant to the order of the deputy registrar to disclose sufficient information that will enable the court to precisely proceed with the execution with clarity in terms of law and facts.

In this matter, throughout the applicants' affidavit and submission, nothing is mentioned as to which award was being executed and what transpired since 1999 when the award was obtained to 2009 when the application for execution was lodged. It is not even explained and justified the procedure applicable in executing a decree dated before the establishment of the Labour court in the current legal settings. These were the matters to be addressed and disclosed in the application envisaged by the deputy registrar when he closed the application for execution. In my view, the whole scenario is still covered by a dark cloud with a bundle of unknown information which needs to be unpacked to know the details of the matter.

From the aforesaid, restoring the application for execution will bring back the same hardship experienced by the Deputy Registrar when he decided to close the matter pending bringing of sufficient information through an

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application. Let the applicants find a suitable way of making such an application pursuant to the order of the Deputy Registrar to make proper disclosure of information to enable the court to proceed with the execution with sufficient information.

It is on the above reasons I find this application not properly before the court. As such the application is struck out. It is so ordered.

Dated at Dar es Salaam this 28th Day of November 2022



KATARINA REVOCATI MTEULE

JUDGE

28/11/2022

