

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

REVISION NO. 274 OF 2021

BETWEEN

NATIONAL BANK OF COMMERCE LTD. APPLICANT

VERSUS

KILULU KISONGO RESPONDENT

JUDGMENT

S.M. MAGHIMBI, J:

The application beforehand is lodged under the provisions of Rule 24(1),(2)(a),(b),(c),(d),(f) and Rule 24(3)(a),(b),(c),(d), 28 (1)(b),(c),(e), and Rule 55(1),(2) of Labour Court Rules, GN. No. 106 of 2007. The applicant is moving the court for the following orders:

- (i) That the Hon. Court may be pleased to call for record of the proceedings and order of the court dated 28 June 2021 (Hon. Teye) on ground that there has been material irregularity on the face of record as regards to the payments on the execution sum.
- (ii) Any other relief that the Honourable court may deem just and fit to grant.

The application emanates from the order of the Deputy Registrar in Execution No. 398/2020 and carries the following background; on 17th March, 2021, this Court (Hon. Deputy Registrar) issued a warrant of Attachment of movable properties in Execution of a Decree for money to the tune of TZS 75,600,000.00 against the Applicant/Decree Debtor. She was to pay the Respondent/Decree Holder the said amount as adjudged by the Commission for Mediation and Arbitration (CMA) in its award dated 03rd April, 2020 arising from Labor Dispute No. CMA/DSM/KIN/R.906/17/1155. In consequence of the issuance of the order of attachment, the Court Broker one Joshua E. Mwaituka of Fosters and Company Limited was ordered under the warrant of attachment to attach the movable properties of the Applicant in Execution No. 398 of 2020; resulting to the Court Broker serving the Applicant with a notice requiring him to honor the Decretal sum by paying the 1st Respondent. Subsequently on the on 25th June, 2021, the Applicant paid the Respondent a sum of TZS 53,089,500 through a bank transfer to the Respondent's Bank account at Stanbic Bank via the Respondent's accounts number 9120001884601. However, in the same order, the Respondent was ordered to attach and sale the Corporate Branch, Plot 3, Azikiwe Street Dar es Salaam, properties of the Applicant;

resulting to the appointment of the Court Broker one Fosters and Company Limited who served the applicant with a notice requiring him to honor the Decretal sum by paying the Respondent.

On 13th July, 2021 the Applicant was served with the 14 days' notice to pay a sum of TZS 83,160,000 as payment of the decree and court broker fees. Aggrieved by the said order, the applicant has lodged this revision raising the following legal issues:

- (i) Whether the Registrar was correct to issue an order of attachment despite of the confirmation of payment of TZS 53,089,500 into the Respondent's account.
- (ii) Whether the Applicant is correct to deduct a sum of TZS 22,510,500/= as PAYE under the issued award subject to the execution.

On those issued, the Applicant is seeking from this Hon. Court the following reliefs:

- i. That this Hon. Court be pleased to revise and set aside the warrant of attachment of movable property in execution of a decree for money on the reasons that the said order was grounded on material irregularities and errors of law.

ii. That this court be pleased to declared that the Applicant has satisfied the decree in full and lift the warrant of attachment.

iii. Cost of this Revision to follow the event

iv. Any other order(s) deemed fit under the circumstances.

I need not reproduce the submissions of the parties in determination of the substance of the application because having gone through the records of this application, I then called the records of the Execution No. 398/2020 and unfortunately in the said file, I found that following non-appearances of the respondent herein (then Decree Holder/Applicant) the court struck out the application with a leave to refile. So what is the meaning of the order striking out the application? By striking out the application it means that all the orders that were previously passed by the court automatically cease to have any force. They cannot be enforced nor executed because they simply do not exist. To that end, it means there is nothing before me to revise as the execution that this revision originated from is no longer in existence. Consequential effect is that the application before me is overtaken by events as there is nothing pending execution in

this court. Owing to that, this application is hereby struck out for being overtaken by events.

Dated at Dar-es-salaam this 10th day of May, 2022.



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S.M. MAGHIMBI
JUDGE