

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

LABOUR REVISION NO. 301 OF 2021

From the ruling issued by Hon. Ng'humbu Deputy Registrar in application for Execution No. 163 of 2020 dated 13th July 2021 in Execution No. 163 of 2020

ANDALUS CORNER LIMITEDAPPLICANT

VERSUS

HAPPYNESS J. KIKOTI1ST RESPONDENT

MARY TENGA t/a TEGEMEZA FINANCE CO.

& COURT BROKER2ND RESPONDENT

RULING

K. T. R. MTEULE, J

15 August 2022 & 24th August 2022

ANDALUS CORNER LIMITED, the Applicant herein, filed the present application for revision against the ruling of the Deputy Registrar in Misc. Application No. 163 of 2020. The Applicant is praying for the Court to call for and examine the record in the said application presided by Hon. W. S. Ng'humbu, DR for the purpose of satisfying itself as to the correctness, legality and propriety of the proceedings and orders made thereto.

The application was supported by a chamber summons and affidavit sworn by Anthony Kombe, Applicant's Personal Representatives.

The Affidavit contains three grounds of revision in paragraph 3. The grounds are as follows: -

- i) Whether it was proper in law for the learned Deputy Registrar to order and make calculation on form No. CC. 10 contrary to the laws.
- ii) Whether it was proper in law for the learned Deputy Registrar to ignore the applicant's arguments referred to him during the hearing of the application without giving reason.
- iii) Whether it was proper in law for 2nd respondent (Court Broker) added TZS 3000000.00 as a cost of attachment without basing on Court of Appeal Rules and Regulations.

Briefly, the background of the dispute traces its genesis from a dispute before the Commission for Mediation and Arbitration alleging for unfair termination. On 13th March 2020 the award was issued in respondent's favor ordering the respondent to be reinstated. Being dissatisfied the applicant filed Revision Application No. 171 of 2020 which was dismissed for being time barred. Then 1st respondent filed application for Execution No. 163 of 2020 while the applicant filed an application for Stay of execution which expired after dismissal of the revision for application. On 13th July 2021 the Execution Order was issued directing the applicant to pay the respondent all terminal benefits plus accrued months that

totaled TZS 13,585,384.00 in lieu of reinstatement which was not honored. Being aggrieved with execution order, the Applicant preferred the present application for revision.

In this revision the Applicant was represented by Mr. Faraji Mangula, Advocate, whereas the Respondent was represented by Mr. Hamza Rajabu, Personal Representative. On 22nd July 2022 this Court raised an issue as **to whether this Court is clothed with jurisdiction to hear revision application against the decision of Registrar on execution.** Parties addressed the court by a way of written submission.

Arguing against the revisability of decision of a deputy registrar, Mr. Hamza Rajabu personal representative is of the opinion that this court has no jurisdiction as lifting up the warrant of attachment will pre-empt and interfere the proceedings of application for Execution No. 163 of 2020. According to Mr. Rajabu, if the applicant is aggrieved she ought to have filed an application for lifting up a warrant of attachment before the same Deputy Registrar. He cited the case of **Stanbic Bank Limited v. Bryson Mushi**, Revision No 34 of 20217, High Court of Tanzania, at Mwanza, (unreported). He thus prayed for the application to be dismissed.

Replying to Mr. Rajabu's submission, Mr. Faraji Mangula cognizant of the fact that labour laws are silent regarding the way of challenging Deputy Registrar's decision, he sought guidance in **Rule 55 (1) of the Labour Court Rules GN.106 of 2007** which allows this Court to adopt other laws in case of lacuna. He therefore referred to **Order XLI Rule 1 of the Civil Procedure Code, R.E 2019** which provides for reference to the High Court. He is therefore of the view that the applicant had option of filing an application for reference and not revision as the High Court Judge cannot revise the decision or order made by the same High Court although the order was made by the High Court deputy registrar. He further stated that the only remedy to the applicant after being aggrieved with Deputy Registrar's decision is to challenge the same by way of reference so that the reasonable doubt raised can be heard by a judge.

Supporting his position, he cited the case of **China Railway Seventh Group Co. Ltd v. Baraka Rajabu Kidori**, Application for Reference No. 4 of 2020, High Court of Tanzania, Labour Division, at Arusha, (unreported). Thus, he prayed for the application to be strike out with a leave to refile.

Having considered parties submissions I have noted that there is no dispute that this Court does not have jurisdiction to entertain an

application for revision against a decision of the Deputy Registrar issued on execution. This means, a decision issued by a Deputy Registrar is not revisable by the High Court. The Applicant's counsel acknowledged that the decision of the Deputy Registrar is the decision of the High Court and therefore, the High Court cannot revise its own decision. I agree with the parties.

This position has been a subject matter in the case of **National Microfinance Bank PLC versus Victor Modesta Banda, Labour Revision No 34 of 2020, dated 31 May 2022** where I am inclined to borrow a leaf. In this case my learned sister **Hon. L. Mansoor** deliberated at length the issue of revisability of the decision of the deputy registrar in execution proceedings. After such lengthy deliberation, she came with a view that the decision of a deputy registrar is not revisable and she dismissed the application which sought revision of a decision of the deputy registrar. In this matter, I will take the same root.

The Applicant has prayed for the Court to strike out this application with leave to refile. With due respect to the Applicant's counsel, the court can not strike out a matter which it does not have jurisdiction to try. The

only remedy available is a dismissal. Consequently, this Application is dismissed for want of jurisdiction.

It is so ordered.

Dated at Dar es Salaam this 24th Day of August 2022



KATARINA REVOCATI MTEULE

JUDGE

24/08/2022