

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

REVISION APPLICATION NO. 420 OF 2022

TANZANIA ROAD HAULAGE (1980) LTD APPLICANT

VERSUS

ASHA HUSSEIN LIMILA 1ST RESPONDENT

KURASINI CONTAINER TERMINAL LTD 2ND RESPONDENT

MAJEMBE AUCTION MART LTD 3RD RESPONDENT

JUDGMENT

*Date of last Order: 15/02/2023
Date of Judgment: 27/02/2023*

B. E. K. Mganga, J.

Brief facts of this application are that, on 1st August 2011, Asha Hussein Limila, the 1st respondent secured employment from Kurasini Container Terminal Ltd, the 2nd Respondent as security officer. On 9th August 2014, the 2nd respondent terminated employment of the 1st respondent allegedly, due to misconducts. Aggrieved with termination, 1st respondent filed Labour dispute No. CMA/DSM/TEM/258/2014 before the Commission for Mediation and Arbitration at Temeke. In March 2017, the Arbitrator having heard evidence of both sides, issued an award that

termination of employment of the 1st respondent was unfair both substantively and procedurally and ordered the 2nd respondent to pay the 1st respondent a total of TZS 4,200,000/=.

Aggrieved with the award, the 2nd respondent filed Revision Application No. 53 of 2020 before this Court. On 3rd September 2021 this Court sustained the CMA award that termination was unfair. Further aggrieved, on 1st October 2021, the 2nd respondent lodged a Notice of Appeal to the Court of Appeal. But the 1st Respondent took a step forward by filing Execution No. 94 of 2022 as a result, an order was issued by the Executing Officer to attach and sell Motor vehicle No. T.824 AUY and T.483 AUY all make FAW allegedly being the property of the 2nd respondent. But before proclamation of sale of the said motor vehicles, the 2nd respondent filed Civil Application No. 402/18 of 2022 before the Court of Appeal against the 1st respondent for stay of execution. On 11th July 2022, single judge of the Court of Appeal granted an ex-parte order staying execution pending inter parties determination by the full Court of Appeal.

On 15th August 2022, Tanzania Road Haulage(1980) Ltd, the herein applicant, filed Miscellaneous Application No. 313 of 2022 for objection proceedings before the Executing Officer praying:-

"(a) That this Honourable Court be pleased to investigate on whether the two vehicles attached by this court vide Execution No: 94/2022 between Asha Hussein Limila and Kurasini Container Terminal Ltd, in execution of an award of Commission for Mediation and Arbitration made against Kurasini Container Terminal Ltd and thereafter issue an order lifting an order of attachment made by this Court against the said Vehicles.

(b) Any other relief(s) this Honourable Court may deem fit and just to grant."

During hearing of the said objection proceedings before the Executing Officer, the 1st respondent raised a preliminary objection that the Executing Officer has no jurisdiction to determine the said application. Having heard submissions of the parties, the Executing Officer having noted that there is a pending appeal before the Court of Appeal filed by the 2nd respondent, upheld the preliminary objection raised by the 1st respondent on ground that applicant's application is connected to the Labour dispute between the 1st and 2nd respondents. The Executing Officer suspended determination of applicant's application pending determination of the appeal file by the 2nd respondent before the Court of Appeal.

Applicant was aggrieved by the Ruling of the Executing Officer hence this application for Revision. In support of the Notice of Application, Applicant filed the affidavit sworn by Boniventure Shango her principal officer. In the said affidavit, the applicant raised one legal issue namely:-

"Whether it was correct for the Deputy Registrar to arrive at the findings that there is a relationship between the Applicant's Application for objection proceedings No. 313 of 2022 and the proceedings initiated by the notice of appeal dated 1st September 2021 and Ex-parte Orde of the Court of Appeal in Civil Application No. 402/18 of 2022, while the Applicant was not a party to the said proceedings".

In opposing the application, 1st respondent filed both the Notice of Opposition and the counter affidavit. But both 2nd and 3rd respondents did not file either the Notice of Opposition or counter affidavit.

When the application was called on for hearing, Mr. Mussa Daffa, learned advocate, appeared, and argued for and on behalf of the applicant while Mr. Barnaba Luguwa, learned Advocate appeared and argued for and on behalf of the 1st and 3rd respondents. Mr. Lusungu Habakuki, the compliance officer, appeared and argued for and on behalf of the 2nd respondent.

Arguing the application on behalf of the applicant, Mr. Daffa, learned counsel for the applicant submitted that, the 1st respondent was an

employee of the 2nd respondent and not the applicant and that the CMA award was against the 2nd respondent. He went on that on 21st March 2022, the 1st respondent filed Execution No. 94 of 2022 against 2nd respondent and prayed to attach motor vehicles are T 824 AUY, make FAW and T 483 AUY make FAW owned by the applicant. Counsel for the applicant submitted further that on 19th July 2022, applicant filed application No. 313 of 2022 for objection proceedings praying the Executing Officer to investigate and issue an order that the said property does not belong to the 2nd respondent rather, belongs to the applicant. Counsel for the applicant strongly submitted that applicant owned motor vehicle No. T. 824 AUY since 29th October 2008 and T. 483 AUY since 07th May 2010. He went on that; the 1st respondent filed a preliminary objection against application No. 313 of 2022 that the executing officer have no jurisdiction because 2nd respondent has filed the notice of appeal before the Court of Appeal challenging the High Court judgment that confirmed CMA award.

Mr. Daffa submitted further that the Executing Officer suspended determination of objection proceedings in Misc. Application No. 313 of 2022 based on the notice of appeal before the Court of Appeal filed by the

2nd respondent. He argued that the notice of appeal to the Court of Appeal was filed by the 2nd respondent while the applicant is not part to that appeal process. He added that, the said notice is against the decision of this Court in relation to CMA award that is not related to the application of the applicant in the objection proceedings. He strongly submitted that in holding that he had no jurisdiction, the Deputy Registrar, misdirected himself because the notice of appeal to the Court of Appeal had no relation with the application to objection proceedings. He therefore prayed that the application be granted.

Resisting the application, Luguwa learned advocate for the 1st and 3rd respondent submitted that Misc. Application No. 313 of 2022 and the notice of Appeal to the Court of Appeal are related. He submitted further that, in the dispute at CMA, Principal Officer of the applicant one Daud Mlezi, gave evidence as Human Resource of the 2nd respondent. He added that Revision No. 53/2020 that was dismissed by this court and now a subject of appeal before the Court of Appeal was preferred by the said Daud Mlezi, as Principal Officer of the 2nd respondent. Mr. Luguwa elaborated that even the affidavit in support of Misc. Application No. 313 of 2022 the subject of this revision application was filed by Daud Mlezi who

stated that the said vehicles are owned by the applicant. It was submissions of Mr. Luguwa learned advocate that applicant also filed Civil Application No. 402/18 of 2022 between **Kurasini Container Terminal Ltd V. Asha Hussein Limila** for stay of execution before the Court of Appeal and the same was granted. In the notice of motion filed before the Court of Appeal on 05th July 2022, in paragraph 8 of his affidavit, Daud Mlezi mentioned the aforementioned motor vehicle as property of the 2nd respondent. Mr. Luguwa submitted further that 2nd respondent stated before the Court of Appeal that the said motor vehicle belongs to her, as a result, an ex-parte application for stay of execution was granted on 11th July 2022 by a single Justice of Appeal. Mr. Luguwa went on that, applicant cannot change now and state that the said motor vehicle belongs to her and not to the 2nd respondent. Counsel for the 1st and 3rd respondents prayed that the application be dismissed for want of merit.

Mr. Habakuki, the compliance officer of the 2nd respondent submitted that the said motor vehicles belong to the 2nd respondent. He went on that, even the cards shows that those motor vehicles belong to the 2nd respondent. In his submissions, Mr. Habakuki conceded that 2nd

respondent was served with the application but did not file the counter affidavit.

In rejoinder, Mr. Daffa, learned counsel for the applicant submitted that 2nd respondent was served on 20th January 2023 but did not file the counter affidavit. Counsel submitted further that, since there is no affidavit by the 2nd respondent, submissions relating to ownership of the motor vehicle in question should be disregarded. He went on that, what was filed and or submitted by the 2nd respondent in Misc. Application No. 402/18 of 2022 before the Court of Appeal are best known to the 2nd respondent and not to the applicant. In his rejoinder submissions, counsel for the applicant conceded that there is conflict of ownership of the vehicles in question between the applicant and the 2nd respondent. He was however quick to submit that the Executing Officer was supposed to determine the application.

I have examined the Court record in Execution No. 313 of 2022 and find that most of the matters submitted by the parties were not put to the attention of the Executing officer. I have noted also that though it was submitted on behalf of the 1st respondent before the Executing Officer that 2nd respondent filed and obtained an ex-parte order of stay of execution in

relation to the motor vehicles in question, the affidavit and or the Notice of Motion that was filed by the 2nd Respondent before the Court of Appeal, was not amongst the documents that were filed by the 1st respondent to oppose the said objection proceedings filed by the applicant. Therefore, I will not consider matters contained in the affidavit and notice of Motion filed by the 2nd Respondent before the Court of Appeal attached to the Notice of Opposition filed by the 1st respondent in this application. The reason and logic are clear, that, at this revision stage, the court is not receiving new evidence that was not considered by the Executing officer.

Again, since there is no counter affidavit by the 2nd respondent, I will also not consider factual issues submitted on her behalf. I am of that view because there is no affidavit evidence that was adduced by the 2nd respondent before the Executing Officer to that effect. That notwithstanding, I should point out that, on 10th October 2022 when the application was scheduled for hearing of objection proceedings filed by the applicant, 2nd respondent was represented by Mr. Mashaka Ngole Learned counsel. On that date, by consent of the parties, the application was ordered to be disposed by way of written submissions. I have noted that

no written submissions were filed by the 2nd respondent. I am of the view that 2nd respondent did so for design.

From submissions of the parties both before the Executing officer and before me, it is undisputed that 2nd respondent filed and obtained an ex-parte order of stay of execution before the Court of Appeal. It is also undisputed that 2nd respondent filed the notice of appeal before the Court of Appeal and that there is a pending appeal challenging the judgment and order of this court. In fact, I have read the ex-parte order of the Court of Appeal in the case of ***Kurasini Container Terminal Ltd v. Asha Hussein Limila***, Civil Application No. 402/18 of 2022 and find that ex-parte stay of execution was granted on 11th July 2022 pending inter parties and determination by the full Court. I have also noted that applicant filed application No. 313 of 2022 for objection proceedings on 15th August 2022 after the Court of Appeal had issued an ex-parte order of stay of execution.

It was submitted by Mr. Luguwa that Mr. Daud Mlezi filed his affidavit in support of Misc. No. 313 of 2022 and that the same person filed the affidavit in support of Civil Application No. 402/18 of 2022 before the Court of Appeal. with due respect to Mr. Luguwa, I have examined the affidavit in support of Misc. Application No. 313 of 2022 and find that the

person who deponed in support of the application is Emmanuel Mvungi and not Daud Mlenzi as submitted by Mr. Luguwa. Again, with all fairness, the person who filed an application for stay of execution before the Court of Appeal is the 2nd respondent as reflected in the above-mentioned Court of Appeal order and not the applicant.

From the facts of this application, in my view, the Executing Officer correctly suspended determination of the objection proceedings pending determination of the matter between 1st and 2nd respondent before the Court of Appeal. I am of that view because, at that time, the Executing Officer was not seized with jurisdiction because the matter was already before the Court of Appeal and he had nothing to do. More so, there was an order of stay by the Court of Appeal. See [*Serenity on the Lake Ltd vs Dorcas Martin Nyanda*](#) (Civil Revision 1 of 2019) [2019] TZCA 65. Hearing or determination of the objection proceedings by the Executing Officer while there was an order of stay of execution by the Court of Appeal relating to the same property would, in my view, have affected the order of the Court of Appeal. I am of that view because, had the Deputy Registrar found that applicant's application is merited and granted the order, that would have amounted into overturning the Court of

Appeal's Order of stay of execution. That in my view, would have been a worse scenario.

For the foregoing, I hereby dismiss this application for want of merit.

Dated in Dar es Salaam on this 27th February 2023.



B. E. K. Mganga
JUDGE

Judgment delivered on this 27th February 2023 in chambers in the presence of Mussa Daffa, Advocate for the Applicant, Asha Hussein Limila, 1st Respondent, Lusungu Habakuki for the 2nd Respondent but in the absence of the 3rd Respondent.



B. E. K. Mganga
JUDGE