

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

**MISCELLANEOUS APPLICATION NO. 524 OF 2022**

**ADVENTINA MGANGA ..... 1<sup>ST</sup> APPLICANT**  
**HANAMARIA G. KAJUNA ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**DR. LUTHER MWAMKOA ..... 1<sup>ST</sup> RESPONDENT**  
**MT. SINAI DISPENSARY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 09/03/2023*  
*Date of Ruling: 22/3/2023*

**B. E. K. Mganga, J.**

Brief facts of this application are that applicants were employees of the 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent is the Director of the 2<sup>nd</sup> respondent. It is undisputed that on 29<sup>th</sup> July 2021, applicants filed Labour dispute No. CMA/DSM/KIN/263/2021 before the Commission for Mediation and Arbitration (CMA) at Kinondoni claiming to be paid salary arrears. It is further undisputed that on 17<sup>th</sup> September 2021, the dispute was successfully mediated as a result, a Certificate of Settlement(CMA F6) and

Settlement Agreement under Mediation(CMA F7) were signed. In the said settlement agreement, it was agreed that the 2<sup>nd</sup> respondent will pay applicants a total of TZS 8,811,000/= on monthly instalments starting from October 2021 until full payment. It happened that 2<sup>nd</sup> respondent did not honour the agreement because she failed to pay even a single shilling to the applicants.

In their attempt to make sure that they are paid according to the settlement agreement, applicants filed Execution No. 460 of 2022 before this court. When the parties appeared before the Deputy Registrar, the Executing officer, to execute the said settlement Agreement, applicants noted that 2<sup>nd</sup> respondent provides essential service hence they cannot attach the dispensary. Applicants found that there is no other property of the 2<sup>nd</sup> respondent to be attached apart from the dispensary itself. Based on the foregoing, applicants filed this application seeking the court to lift the corporate veil so that Dr. Luther Mwamkoa, the 1<sup>st</sup> respondent, can settle the decretal sum. To support the Notice of Application, applicants filed their joint affidavit.

On the other hand, the 1<sup>st</sup> respondent filed the counter affidavit opposing the application but the 2<sup>nd</sup> respondent did not either file the counter affidavit or the Notice of Opposition to oppose the application.

When the application was called on for hearing, applicants were represented by Jimmy Mnkeni, from CHAWAMATA, a Trade Union while the 1<sup>st</sup> respondent appeared in person.

Arguing in support of the application, Mr. Mnkeni submitted that, applicants were employees of the 2<sup>nd</sup> respondent and that the 1<sup>st</sup> respondent is the Director of the 2<sup>nd</sup> respondent. Mr. Mnkeni submitted further that, applicants filed the dispute before CMA, as a result, it was mediated on 17<sup>th</sup> September 2021 and that, both applicants and the 2<sup>nd</sup> respondent signed CMA F6. He submitted further that, in the said CMA F6, parties agreed that the 2<sup>nd</sup> respondent will pay a total of TZS 8,811,000/= to the applicants. He submitted further that, the 2<sup>nd</sup> respondent did not comply with the settlement order, as a result, applicants filed Execution No. 460 of 2022. He went on that, applicants failed to attach and sale property of the 2<sup>nd</sup> respondent because it provides essential service.

Mr. Mnkeni submitted that 1<sup>st</sup> respondent, being director of the 2<sup>nd</sup> respondent, did not take action to pay the agreed amount in the settlement agreement. He went on that; applicants filed this application so that the veil can be unveil with a view of ordering the 1<sup>st</sup> respondent to pay applicants TZS 8,811,000/=. Mr. Mnkeni prayed that, the corporate veil be lifted so that 1<sup>st</sup> respondent can be ordered to pay the applicants and that if he fails, his personal property be attached and sold or be arrested and detained as Civil Prisoner.

On his part, Dr. Mwamkoa, 1<sup>st</sup> respondent submitted that, initially 2<sup>nd</sup> respondent was called Tumaini Dispensary but later, changed name into Mt. Sinai Dispensary. He submitted further that, at the time of registering the 2<sup>nd</sup> respondent at the Business Registration and Licensing Agency (BRELA), he submitted his certificates because it was not possible for the 2<sup>nd</sup> respondent to be registered without his certificates. He conceded that, he is the Director of the 2<sup>nd</sup> respondent. In his submissions, 1<sup>st</sup> respondent submitted that he directed the 2<sup>nd</sup> respondent to settle the dispute at CMA because claims of the applicants were genuine. Dr. Mwamkoa admitted that at CMA, the matter was mediated on condition that the 2<sup>nd</sup> respondent

will pay applicants a total of TZS 8,811,000/=. He also conceded that, the 2<sup>nd</sup> respondent has not paid the applicants the amount agreed at CMA.

In rejoinder, Mr. Mnkeni for the applicant had nothing to add other than praying that the application be granted.

From submissions of the parties, it is undisputed that on 17<sup>th</sup> September 2021, the dispute was successfully mediated, as a result, both parties signed a Certificate of Settlement(CMA F6) and Settlement Agreement under Mediation(CMA F7). The said CMA F6 and CMA F7 were signed by Adventina Mganga, the 1<sup>st</sup> applicant and Solomon Charles on behalf of the 2<sup>nd</sup> respondent in the presence of Hon. Mahindi, P, the Mediator. In the said Settlement Agreement under Mediation(CMA F7) it was agreed that the 2<sup>nd</sup> respondent will pay the applicants a total of TZS 8,811,000/=. It was agreed further that; (i) Adventina Mganga will be paid a total of TZS 2,425,000/= and that the 2<sup>nd</sup> respondent will pay the said amount by instalment of TZS 400,000/= on every tenth day of each month starting from October 2021 to full payment and that; (ii) Hanamaria G. Kajuna will be paid a total of TZS 6,386,000/= and that the 2<sup>nd</sup> respondent will pay the said amount by instalment of TZS 600,000/= on every tenth day of each month starting from October 2021 to full payment. It is also

undisputed fact that the 2<sup>nd</sup> respondent has not complied with the said settlement agreement. It is further undisputed that, the 1<sup>st</sup> respondent is the Director of the 2<sup>nd</sup> respondent and further that, 1<sup>st</sup> respondent is aware of the settlement agreement. It is also undisputed that the 1<sup>st</sup> respondent is aware that the 2<sup>nd</sup> respondent has not paid the applicants.

From the above undisputed facts, it is my view that, both 1<sup>st</sup> and 2<sup>nd</sup> respondents has willfully decided not to comply with the settlement agreement that was entered on 17<sup>th</sup> September 2021. I should point out that, in terms of Rule 17(2) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules GN. No. 67 of 2007, the said settlement agreement is executable by this court as if it is a decree of this Court. That being the position of the law, I am of the considered opinion that there are three compelling reasons warranting grant of this application namely, One; a long-established principle that court orders must be respected and complied with, otherwise, there will be no need of issuing them. See the case of [\*\*Karori Chogoro vs Waitihache Merengo\*\*](#), Civil Appeal No. 164 of 2018 [2022] TZCA 83, wherein the Court of Appeal held *inter-alia*:-

*"Court orders should be respected and complied with. Courts should not condone such failures. To do so is to set bad precedent and invite chaos. This should not be allowed to occur..."*

A similar position was held by this court in the case of *Daud Godluck Sollo vs. Dar es Salaam Institute of Technology Saccoss Ltd* (Misc. Application 197 of 2022) [2022] TZHCLD 930 and *Mustaquim Murtaza Darugar na Wanzagi Selemani Makongoro na Wenzake 2* (Maombi Marejeo 43 of 2022) [2022] TZHCLD 802. Two; a need to give effect the provisions of Part VIII sub-Part A of the Employment and Labour Relations Act [Cap.366 R.E.2019] and Part II of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, GN. No. 67 of 2007 all relating to mediation. It is my view that, if these laws are not accorded the weight they deserve, parties to the dispute will continue to take lightly mediation process and defeat the whole purpose and intent of mediation. Three; a need to do justice to the parties particularly, the applicants. I am of the view that, if the order will not be carried out, an impression will be created that an employer can do anything to the employee including but not limited to violation of the law and left free. An impression will be further created to the public that, even if an order is issued against the employer, that order will not be enforced as a result, it will remain an empty egg unable to give life to the chick. From where I am standing, that is the impression both 1<sup>st</sup> and 2<sup>nd</sup> respondents want to create in the public that they are untouchable.

That in my view, is a wrong perception and they should delete forth with in their mind. The court is there to protect both the stronger and the weak by doing justice to all but within our constitutional mandates. I am of the view that respondents think that they are untouchable because 1<sup>st</sup> respondent admitted that he is aware of the settlement agreement that was entered on 17<sup>th</sup> September 2021 and that up to now, applicants have not received their money. There cannot, in my view, be any good reason for that failure. In fact, 1<sup>st</sup> respondent has offered none. In my view, that is an indication that respondents believe nothing will be done to them because they are powerful or they believe that nothing will happen because the 2<sup>nd</sup> respondent provides health services to the people around the area. In my view, protection under the umbrella of providing essential services namely, health service to people around the area, cannot be used in the detriment of the applicants. The court will, at all times, make sure that the law and its orders are complied with and find a way on how it will be implemented. More so, respondents have exploited the provisions of the law namely absence of interest and costs in labour cases. Respondents are aware that even after lapse of several years without paying the applicants, they will pay only the amount that was agreed at CMA without considering



devaluation of currency. In my view, it is high time now to consider this issue objectively, otherwise, parties may take that chance to ensure that at the time of payment, the payee will not get the exact value of what was awarded.

That said and done, I hereby allow the application and order that applicants are at liberty to comply with the law and ensure that the 1<sup>st</sup> respondent satisfies the money agreed in the settlement agreement at CMA.

Dated at Dar es Salaam on this 22<sup>nd</sup> March 2023.



B. E. K. Mganga  
**JUDGE**

Ruling delivered on this 22<sup>nd</sup> March 2023 in chambers in the presence of Jimmy Mnkeni, from CHAMAWATA, a Trade Union for the Applicants but in absence of the Respondents.



B. E. K. Mganga  
**JUDGE**