IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 286 OF 2022

(Arising from the decision in Execution application No. 40(b) of 2004 delivered on 18th January, 2011 before Hon. P.S. Mazengo, Deputy Registrar)

BETWEEN

MWANAISHA JUMA & 87 OTHERS ..... APPLICANTS

VERSUS

UBUNGO GARMENTS LTD & 2 OTHERS ..... RESPONDENTS

JUDGMENT

S.M. MAGHIMBI, J:

This application was lodged under the provisions of Section 91(1)(a) &(2) (b), 94(1)(b) of the Employment and Labour Relations Act, Cap. 366 R.E 2019 ("ELRA") and Rules 24(1)(2)(a)(b)(c)(d)(e)&(f),(3)(a)(b)(c)&(d) and 28(1)(c)(d)&(e) of the Labour Court Rules, G.N. 106 of 2007 ("the Rules"). It emanates from the decision of the Deputy Registrar (Hon. Mazengo) in Execution Application No. 40(B) of 2004, a decision delivered on 18/01/2011. In the impugned decision, the Deputy Registrar Ruled that the applicants were not entitled to the claimed amount of Tshs. 419,943,723/- as filled in their execution application form and instead, the Deputy Registrar ordered payment of Tshs. 62,892,900/- as what she determined to be the amount which was ordered in the judgment. The

applicants were aggrieved by the said decision and following several applications after being late to file revision, they have lodged this application under the above cited provisions moving the court for the following orders:

1. That this court revise and set aside the ruling of the Deputy Registrar dated 18th January, 2011.
2. Any other order that the court may deem fit and just to grant.

The application was disposed by way of written submissions. The applicants' submissions were drawn and filed by Mr. Stephen Ndila Mboje, learned Advocate while the respondent's submissions were drawn and filed by Mr. Ayoub Gervas Sanga, learned State Attorney.

Having considered the parties' submissions and facts of the case, the issue before me is whether the amount of Tshs. 62,892,900/- ordered by the Deputy Registrar to be paid to the applicants was contrary to what was ordered by the High Court in Civil Appeal No. 194/2005 and the decision of the Industrial Court in Revision No. 40(B) of 2004, so to speak, I am called to interpret the two decisions.

It is apparent on the record that in their application for execution, the applicants had claimed an amount of Tshs. 419,943,723/- an amount which the Deputy Registrar was not convinced to grant. This is because of another crucial issue; neither the judgment in Civil Appeal No. 194/2005 nor in Revision No. 40(B) of 2004 specified the amount that the applicants were to be paid. As per the records, in conclusion of their decision in Civil Appeal No. 194/2005, the Court held:

> *"For us, we are of considered opinion that each Appellant has a right to be paid salary increments as per Scopo Directive Number 57 and as required under the Treasury Registrar Circular No. 4 of 1993."*

At this point, it is important to trace the background of the final verdict of the High Court in Civil Appeal No. 194/2005, which is found in the same judgment where the court held:

> *"In its original decision, the Industrial Court vice chairperson Mrs. William ruled that the Appellants were entitled to their salary increments as per Scopo Directive No. 57 and that they should be paid according to that Directive. However, in its revision of the*

decision of Mrs. William vice chairperson, the Industrial Court E.L. Mwipopo, J. Chairman, I.S. Mipawa vice-chairman (as he then was) and K.M.M. Sambo vice-chairman (as he then was) ruled that the Appellants are not entitled to salary increments as claimed by them and set aside the original decision delivered by Mrs. William vice-chairperson. In doing so, the full bench of the Industrial Court stated that as the Appellants used to receive their salaries from the Respondent without question and as Scopo Directive No. 57 was not produced in court as evidence, there was no reasonable ground for them to burden up the Respondent with their claim of salary increments as per Scopo Directive No. 57.

We have read the Treasury Registrar Circular No. 4 of 1993 dated 10/11/1993 with ref. No. JYC/P/10/3/01/33 signed by the then Treasury Registrar WJ.M. Mdundo addressed to Public Institutions and Corporations. In essence, this circular laid emphasis that Public Institutions and Corporations such as the Respondent should bear the burden of paying the workers their terminal benefits on retrenchment.

We have also read Scopo circular No. 57 with Ref. No. KMU/S/525/52 dated 5/9/1989. This circular became operative on 1/7/1989. It is signed by A. Cheyo who was the Chairman of the Presidential Parastatal Reform Committee. Among other things, this circular laid down salary scales authorized by the Government in respect of workers in Parastatal Organisations holding different posts. These workers included casual labourers (vibarua) and rare professionals such as Pharmacists, Doctors, Accountants etc.

As far as we know, during the period of their employment with the Respondent, the Appellants' salaries were being governed by Scopo Directive No. 57. Thus, we do not agree with Mr. Msemwa that Scopo Directive No. 57 was not applicable to the Applicants. The Respondent did not produce evidence of its inapplicability to the Appellants. Also, we do not agree with a full bench of the Industrial Court that requiring the Respondent to pay the Appellants their salary increments which they were supposed to be paid and were never paid during their employment is to impose a burden on the Respondent."

It is from this background that the High Court held that the Appellants were entitled to their salary increments as per Scopo Directive No. 57 and that they should be paid according to that Directive. This is emphasized in the part of the judgment where the High Court disagreed with the full bench of the Industrial Court requiring the Respondent to pay the Appellants their salary increments which they were supposed to be paid and were never paid during their employment is to impose a burden on the Respondent. The High Court held that this part of the decision of the Industrial Court was not proper and instead, they ordered the applicants to be paid their salary increment as per the Scopo Directive No. 57.

It is also pertinent to note that in the decision of the full bench of the Industrial Court, the revision was partly allowed and it is the part of the decision mentioned on the preceding para that denied the applicants to be paid their salary increments, which was appealed against to the High Court and the appeal was allowed. So what do we get from the two decisions? From the two decisions, and for the purposes of execution, it means that the applicants were entitled to be paid as elaborated hereunder:

1. Since both the courts held that taking the applicants to leave without pay was contrary to the law, the applicants were entitled to be paid their salaries during the time they were in what the respondent termed to be "leave without pay". (See page 3 of the decision of the Industrial Court in Revision No. 40(B) of 2004).
2. The High Court in Civil Appeal No. 194/2005, ordered the applicants to be paid their salary increment as per the Scopo Directive No. 57.

Much as I agree with Mr. Sanga that in their judgment in Civil Appeal No. 194/2005 the High Court did not specifically order the respondent to pay the applicants the claimed sum of Tshs. 419,943,723/-; however, this does not take away the applicants' right to be paid their salary increment as per the Scopo Directive No. 57. More so important, neither did the judgment specify that the applicants were to be paid the amount of Tshs. 62,892,900/- that the Deputy Registrar ordered to be paid. This will now take me to the last issue to be determined by this court, what is the amount to be paid or how should the calculation for the amount be made.

In reading the ruling of the Hon Deputy Registrar, at page 5 she was very clear that the item covering salary increments was ambiguous as the applicants submitted different salary increments for the period of 1993 to

1994 and this is where the dispute lies. It is therefore the duty of the applicants to submit the correct and actual salary increments for the disputed period covering 1993 to 1994. However, this decision does not disturb the salary arrears for the period of June 1993 to July 1994 which is Tshs 53,280,360/- which was assessed and granted by the Deputy Registrar. In conclusion therefore this court orders the following:

1. The applicants should be paid their salary arrears from June 1993 to July 1994 when they went to unpaid leave which was Tshs 53,280,360/-.
2. Since the claimed amount Tshs. 419,943,723/- was never proved, the applicants shall submit evidence to justify their salary increments as per the Scopo Directive No. 57. The amount to be paid shall be in addition to the amount of Tshs Tshs 53,280,360/- ordered in (1) above.

The above said and done, this revision is allowed to the extent explained.

Dated at Dar es Salaam this 27th day of February, 2023.

MAHAKAMA KUU YA TANZANIA (The High Court of Tanzania) DIVISHENI YA MAHAKAMA YA KAZI (Labour Division)

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S.M MAGHIMBI
JUDGE