

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

MISC. APPLICATION NO. 516 OF 2022

BETWEEN

JOHN BARTON SIMCHIMBAAPPLICANT

VERSUS

K.K. SECURITY (T) LTD.RESPONDENT

EX-PARTE RULING

Date of last Order: 16/02/2023

Date of Ruling: 31/03/2023

MLYAMBINA, J.

The Applicant preferred this application for the grant of two orders: *One*, this Court be pleased to order the Executing Officer to proceed with the *Execution No. 360 of 2022*. *Two*, any other reliefs this Court may deem fit and just to grant.

The application was argued orally. The Applicant appeared in person, unrepresented. On the other hand, the Respondent did not enter appearance hence, ex-parte ruling.

Arguing in support of the application, the Applicant submitted that; on 17/11/2022, the Judgement Debtor did not give reasons as to why execution should not be done in respect of *Execution Application No. 360 of 2022*. He stated that; the executing officer invented reasons as to

why execution should not proceed. The Applicant argued that; the Judgement Debtor, if does not give reasons as to why execution should not be done, the executing officer cannot give reasons by himself to deny execution to proceed.

The Applicant strongly submitted that; the Judgement Debtor, if does not give reasons to bar execution, the executing officer cannot dismiss the application for execution. He further submitted that; the execution officer is not supposed to give evidence whether documentary or orally. Instead, he is supposed to give decision based on the evidence paraded before him. He added that; even the *Civil Procedure Code [Cap 33 Revised Edition 2019]* (to be referred as 'CPC'), do not have any order which vests powers to the executing officer to give evidence. The Applicant concluded by urging the Court to order the executing officer to proceed with *Execution No. 360 of 2022* in accordance to the procedure.

Having carefully examined and evaluated the Applicant's arguments in light of the present application, as well as Court records, I find the Court is called upon to determine only one issue; *whether the Applicant adduced sufficient reason warranting this Court to allow Execution No. 360 of 2022* to proceed.

In *Execution No. 360 of 2022*, the Deputy Registrar struck out the application on the ground that Hon. Mganga, J ordered the striking out of *Execution No. 360 of 2022* in *Miscellaneous Application No. 256 of 2022* on 11th November, 2022. In the said ruling, the Applicant was also directed to execute the decree of this Court by Hon. Maruma, J delivered in *Revision No. 133 of 2020*. In *Miscellaneous Application No. 256 of 2022* the Court's decision was to the following effect:

It is my view that in presence of the decree of this Court (Maruma, J), Applicant was not supposed to apply for execution of *CMA Award in Execution No. 360 of 2022*. He was supposed to file an application to execute the decree of this Court. It is my further view that Applicant filed *Execution Application No. 360 of 2020* to execute CMA Award is an abuse of Court process as he was aware that the said Award was revised by this Court by Hon. Z.A. Maruma, J. Since the Applicant filed *Execution No. 360 of 2022* on 9th September 2022 while aware that he had filed *Execution Application No. 363 of 2021* praying to enforce this Court's decree (Z.A. Maruma, J) and further being aware that he was required to file an application for interpretation of this Court's judgement (Z.A. Maruma, J) and having filed this application on 01st July, 2022, he was precluded from filing *Execution Application No. 360 of 2022*. He cannot be allowed to ride two horses at once while knowingly that one of the

horses does not belong to him meaning that the CMA Award was no longer existing as it was revised by this Court. As pointed above, if he was aggrieved by the decision of this Court, the recourse was to appeal before the Court of appeal. That said and done, I order the *Execution Application No. 360 of 2022* should be struck out.

The above Court's order is quite clear. The Applicant's application for *Execution No. 360 of 2022* was ordered to be struck out since the Applicant's prayer was to execute CMA's decision which was already revised by this Court. Following the above order, the Deputy Registrar proceeded to struck out *Execution Application No. 360 of 2022*.

In the event of the foregoing, I find the Deputy Registrar's decision was in line with the Court's order. He was not in the position to proceed with the application which was ordered to be struck out by the Judge on justifiable grounds. To add more, the Deputy Registrar's decision is pursuant to the provision of the law in terms of *Order XXI Rule 26 of the Civil Procedure Code, Cap 33 [Revised Edition 2019]* which provides:

Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the

execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

In the result, I find the present application has no merit. If the Applicant was aggrieved by this Court's decision in *Miscellaneous Application No. 256 of 2022*, he was supposed to file an appeal before the Court of Appeal. Thus, this application is misconceived and abuse of Court process. The application is dismissed accordingly.

It is so ordered.



Y.J. MLYAMBINA

JUDGE

31/03/2023

COURT

Ex-parte Ruling pronounced and dated 31st March, 2023 in the presence of the Applicant in person and in the absence of the Respondent.



Y.J. MLYAMBINA

JUDGE

31/03/2023

