

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

**REFERENCE NO. 529 OF 2022**

*(Arising from Execution No. 351 of 2021)*

**RAYMOND SWAI..... APPLICANT**

**VERSUS**

**TANZANIA PORTS AUTHORITY.....RESPONDENT**

**RULING**

**K. T. R. MTEULE, J.**

**19<sup>th</sup> April 2023 & 19<sup>th</sup> May 2023**

This ruling is in respect of a preliminary objections raised by the respondent against an application for Reference application emanates from ruling issued in Execution No. 529 of 2022 issued by the Deputy Registrar, Hon. E.J Nyembele dated 28<sup>th</sup> June 2022 and set it aside.

The prayers contained in the Chamber summons are: -

1. That, this Honorable Court be pleased to make a reference on the ruling issued in Execution No. 529 of 2022 by the Deputy Registrar, Hon. E.J Nyembele dated 28<sup>th</sup> June 2022 and set it aside.
2. That this Honourable Court be pleased to quash the decision of Honourable Deputy Registrar that the application is res judicata
3. Cost of this application be provided for.

4. Any other relief(s) this Honourable Court deems fit and just to grant.

The Application is supported by an affidavit sworn by the applicant's Advocate, Nashoni Nkungu. Opposing the application, the respondent filed a counter affidavit sworn by Florence Madelemo, respondent's Principal Officers. The preliminary objections are to the effect that; - *"the application is untenable in law as the Court lacks jurisdiction to entertain this application and the application is untenable in law for contravening Rule 24(3) of Labour Court Rules G. N No. 106 of 2007."*

The preliminary objections raised by the respondent was argued by way of written submissions. The respondent's submission was drawn and filed by Mr. Mathew Fuko, State Attorney, from the office of Solicitor General who represented the respondent, while applicant was represented by Mr. Nashon Nkungu, Advocate. All the submissions are valued, and will be considered in determine this ruling, regarding points of law raised against the reference application.

Starting with the first point of preliminary objection **regarding the jurisdiction of this Court in entertaining this application** the respondent contended that, **Section 50(1)(b)** of the Written Laws (Miscellaneous Amendment) (No.2) of 2020 recognizes the Deputy Registrars of this Court to form part of the High Court. On such basis

he is of the view that the only remedy available to the applicant if aggrieved with the ruling issued by the Deputy Registrar in Execution No. 351 of 2021 is to refer/ to appeal to the Court of Appeal or review in this Court and not to challenge by way of reference in this Court.

On other side the applicant maintained that this Court has inherent power of entertaining reference. Basing on inherent power he believes that the amendment of **Section 50(1)(b)** of the Written Laws (**Miscellaneous Amendment**) (**No.2**) of 2020 had nothing to do with or take away such inherent power.

In addressing the preliminary objection raised, I find worth to give the meaning of referring "*reference*" as captured under **Section 77 Cap 33 R.E 2019. Section 77** provides that; -

*77 "Subject to such conditions and limitations as may be prescribed, any court may state a case and refer the same for the opinion of the High court, and the High court may make such order thereon as it thinks fit."*

Again, the meaning of making reference, has been addressed in the case of **Halima Saidi Kazuwa vs. Said Seleman Ngalunda, Civil Reference No. 8 of 2021 (HC-DSM -Tanzlii)**, where the Court held that;-

*"The term reference is defined in Black's Law Dictionary to mean "refer to. "In other words, reference is a legal process in which a party who is discontented with a decision of a lower court to refer the matter to the higher court for corrections".*

From the above meaning, reference must originate from the lower Court, unless the law provides otherwise, and except for reference arising from Bills of costs). (**See Rule 7 of Advocates Remuneration Order 2015, G.N. 263 la 2015**).

In this application, the record available reveals that the reference applied for the applicant is against the ruling issued by the Deputy Registrar in **Execution Application No.351 of 2021**. According to **Section 50 (1) (b) of the LIA (Cap 300 RE 2019)** as amended in **the Written Laws (Miscellaneous Amendments) (No.2) Act, of 2020, Act No.3 of 2020** the Deputy Registrar is recognized as a part of the High Court Labour Division. This stand has been stressed in the case of **Sogea satom Company v. Barclays Bank Tanzania, DB Shapriya & Co. Ltd and Santana Investment Limited, Reference Application No. 15 ya 2021, High Court of Tanzania, at Dar es salaam**. It was held that;-

*"The question that follows is whether a decision rendered by a Deputy Registrar of the High Court can be considered as a decision or order of a lower court? The answer to this question is no. Except*



*where the law clearly states otherwise, a decision or order rendered by the Deputy Registrar of the High Court is a decision of the High Court and may be challenged by way of an appeal, reference and/or revision to the Court of Appeal or by way of review to the same High Court."*

From the above legal position, it is, clear that a decision of a Deputy Registrar cannot be challenged in this Court by a way of reference, because allowing the same to be entertained will not only add multiplicity of cases, but also it will affect the impartiality of the high court.

Having saying that, I hereby uphold the first point of preliminary objection. In this case, I see no need to labour on the second point of objection as the issue of jurisdiction suffices to dispose of the matter.

Consequently, the first point of preliminary objection is hereby upheld and the application is dismissed for want of prosecution. Each party to take care of its own cost. It is so ordered.

Dated at Dar es Salaam this 19<sup>th</sup> day of May 2023.



**KATARINA REVOCATI MTEULE**

**JUDGE**

**19/05/2023**

