

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION**

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 384 OF 2022

BETWEEN

RASHID BOWA APPLICANT

AND

D.T. DOBBIE & CO. (T) LTD.....RESPONDENT

RULING

30TH May -8th June 2023

OPIYO, J

This application is for revision of the decisions made in the execution application No. 150 of 2013 so as to translate and elaborate the judgment made over stay of executions, also to state the salary and other rations according to the decision of Council for Mediation of Labour Disputes.

The application was filled by the support with the applicant's affidavit with the grounds that:-

1. *If the judgment and award of appeal No. 120 of 2012 of the Tanzania Labour Court (Industrial Court of Tanzania) was implemented and the awardee of the award be paid employment dues in accordance with the judgment and award?*
2. *Whether the judgments of the Deputy Registrar of the Labour Court of 13/04/2012 and 23/07/2013 in the application for execution No. 150 of 2012 were the correct legal authority to change the award granted in appeal No. 120 of 2010 of the Tanzania Labour Court?*



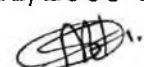
3. *Whether the deputy registrar was right to change the Labour Court Award while there was payment, I have already been paid by the defaulter owes the Award.*
4. *What if the judgment of Appeal No. 120 of 2010 of the Tanzania Labour Court ordered the awardee to pay a severance payment and twelve months' salary and for was for the time he was terminated?*

Before the hearing proceeded the respondent raised a preliminary objection that: -

- i. *That this honourable Court should be content to dismiss this application for lack of merit.*
- ii. *That this honourable Court be satisfied to order the applicant to pay any other cost it deems just and appropriate.*

The matter was ordered on 07th March, 2023 to be heard by way of written submission. Both parties were represented. Mr. Michael Deogratus Mgombozi, from Tanzania Union of Private Security Employees (TUPSE) represented the applicant, whereas Mr. George Ambrose Shayo, Learned Counsel was for respondent.

In support of the preliminary objection, Mr. Shayo submitted that the applicant's dispute on unfair termination as governed by the repealed labour law "the Security of Employment Act", was preferred by the applicant by way of an appeal to the Conciliation Board. He continued that on 28/11/2008 the



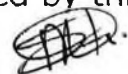
Conciliation Board delivered its decision by holding that, the applicant was unfairly terminated and it ordered he be reinstated (*Annexure DT-1*). He stated further that aggrieved by the decision, the respondent decided to lodge a reference to the then Industrial Court vide Ref. No. 120 of 2010 and it was held that there was valid reason for the applicant's termination although procedures for termination were not all adhered to hence the Industrial Court confirmed the decision of the Conciliation Board (*Annexure DT-2J*). He continued that the applicant then filed an execution No. 150 of 2012 which held that the applicant has to be paid compensation because reinstatement order couldn't be feasible between the parties. He proceeded that the respondent prepared a cheque and payment breakdown ready to pay the applicant but the applicant refused to be compensated (*Annexure DT-3J*).

Mr. Shayo submitted further that the applicant was dissatisfied by the decision in execution no. 150 of 2012 and decided to make an application for review and its ruling confirmed the previous decision and found out there is no error or grounds worth reviewing (*Annexure DT-4*). He continued that, the applicant disappeared from the year 2014 until 2016 when he emerged to institute another execution application No. 284 of 2016 which

was withdrawn by the applicant and his representative one Michael Mgombozi (Annexure DT-5J).

The applicant then filed for the application for extension of time (Misc. Labour Application No. 370 of 2017) so as to challenge the decision of this Court in the execution no. 150 of 2012 which was struck out for being incompetent. Again, the applicant knowing the ruling on execution no. 150 of 2012 is still operative decided to apply for yet another application for extension of time, (Misc. Application No. 120 of 2019) so he can be granted leave to challenge the decision of the execution No. 150 of 2012 and it was held that the applicant had failed to account for each day of delay and among other things failed to show good cause. For him this Court pursuant to the applicant's execution No. 150 of 2012 remains valid and unchallenged for applicant to be paid compensation in lieu of reinstatement order and binds the parties herein to date (Annexure DT-6).

He submitted further that the applicant instituted another execution No. 149 of 2020 seeking to execute the Conciliation Board decision and subsequent ruling of the Industrial Court. Objection was raised by the respondent that the applicant had an execution that had already been determined by this



Honourable Court. However the court decided to entertain the matter to allow the court enough time to make reference to the respondent's alleged facts of objecting the execution. Hearing schedule was made on 13/7/2020 when the matter was ordered to proceed by way of written submissions. The applicant did not file his submissions as ordered, but the respondent did explaining why the matter should not be entertained (Annexure DT-7). The matter was later dismissed for applicant's failure to file his written submission as per annexure DT-8 to the respondents counter affidavit.

That, the applicant did not end there, following the dismissal order for his non-appearance he yet instituted another execution no. 545 of 2020 of which the respondent objected because the matter was already dismissed, what he had to do was to seek for setting aside dismissal order first if he so wished to restore his dismissed case. However, Hon. Teye DR held that the applicant was free to bring a fresh execution following the dismissal order in the execution No. 149/2020. The execution no. 545 of 2020 was scheduled for hearing however, the respondent raised yet another jurisdictional issue as a preliminary objection that this Court had no Jurisdiction to entertain the said execution No. 545/2020 for being a *res judicata* as the parties' execution had already been determine by this Court. The objection was sustained and the

execution application dismissed on 16/9/2020, Hon Matembele, DR.
(Annexure DT-9).

He submitted that, applicant ignoring the firm decisions of this court as shown by numerous applications he had filed has brought this application praying for revision of the decision in execution no 545/2020 and praying for interpretation of this courts previous decisions as noted above. This is the reason they have raised the objection as in their observation the application is tainted with illegalities.

He then proceeded to submit on the first point of objection, by stating that the law bars the applicant to institute a revision against the decision of the Deputy Registrar as held by this Honorable Court in the Case of **Iron and Steel Limited Vs Martine Kumalija And 117 Others, Revision No. 169 Of 2022, HC, labour Division**, Mteule J. where she held that:-

"...Further the decision of the Deputy Registrar cannot be distinguished from the decision of other Deputy Registrars since they all derive their execution power from the same law. As well, applications for execution are being registered in the High Court. This being the case, their decisions are decision of the High Court...it is therefore my finding that this court does not have

jurisdiction to entertain a matter arising from the decision of a Deputy Registrar in execution of decree...”


And on the second point of objection, he stated that the present revision application is non-starter considering the parties' pleadings that the decision in execution no. 150 of 2012 is still valid and the applicant has been denied leave to challenge the same. He stated that records show that, the applicant had already been denied leave for extension of time therefore the applicant's present application cannot stand. In his view had the applicant being aggrieved by the decision in execution no 150 of 2012 he ought to have instituted a case at the Court of Appeal but he disappeared for about two years. He continued that the decision on execution no 150 of 2012 delivered for payment of compensation in lieu of reinstatement is still valid and unchallenged, as the legal consequence of withdrawal order barred the applicant to re-institute another case. That the applicant's application for extension of time (Misc. Application No. 120 of 2019) was decided by this Court, the legal consequence of dismissal order of the applicant's execution No. 149 of 2020 bars the applicant to institute any other case challenging decision in execution no 150 of 2012. He then finalized by stating that after



all this honorable Court has no jurisdiction to revise its own decision and prayed for the application to be dismissed.

In responding to the preliminary objection raised, Mr. Mgombozi submitted that the applicant has found nothing but an academic paper of a law student which has nothing to do with the industrial court' ruling and that he strongly dispute respondent's submission. He stated that the applicant filed the application for execution to seek enforcement of decree of the Industrial Court, but the respondent brings preliminary objections so as to delay the matter. He then urged for timely justice by ignoring the objections.


He continued to argue that the Deputy Registrar has no powers to make any calculations of the court or the Commission. And so, for him no real decision has been made to prevent the enforcement of decree of the Industrial Court or labour court decree. For that he referred to the case of **George Mapunda and Another vs DAWASCO**, Revision No. 1 of 2014, Rweyemamu J (as she then was) at page 8 where it was held that the labour court Deputy Registrar has no power to determine or make calculations payable under the decree.



He continued to contend that the ruling of Deputy Registrar has no power to make any illustration of the applicant entitlements by the decree of the Industrial Court or labour court decree. To cement his point he referred to the case of **Capital Decoration & Building Works vs Edward Rugayaza & 48 Others** (Unreported), Dar Es Salaam Registry, Labour application Execution No.g 418 of 2009.

He continued to submit showing the challenges noted in the decision of the Deputy Registrar in execution No 150mof 2020 which in my view does not address the preliminary objection we have to determine at this point. The submission on the same is therefore not picked up in this stage of preliminary objection determination.

In rejoinder, Mr. Shayo reiterate his submissions in chief and stated that the applicant in his submissions is arguing on the contents of his intended revision on merit while at the present juncture, he should be replying to the respondent's submissions on preliminary objection. Therefore, as the applicant's submission is marred with fatal premature arguments, he prayed for the same to be ignored.



On determination of the preliminary objection raised starting with the first point of objection, it is undisputed that this application is filed for a revision of the decision of the execution No. 545 of 2020 and no. 150 of 2013 by Honourable Deputy Registrars. The issue is of as to whether the application is attainable.

The respondent through her advocate stated that this court has no jurisdiction to revise Deputy Registrar's decision while the personal representative of the applicant stated that the advocate for the respondent tends to bring about preliminary objections which delays the matter and continued to challenge the merit of the case about deputy registrars' decision.

Bearing in mind the fact that jurisdiction of courts is conferred and prescribed by law it is therefore a primary duty of every court, before venturing into a determination of any matter before it to first satisfy itself that it is vested with the requisite jurisdiction to do so (**Patrick William Magubo vs Lilian Peter Kitali**, Civil Appeal No. 41 of 2019, CAT.

As far as revisionary powers this court has are provided under section according to section 91(1)(b)(i) of the Employment and Labour Relations Act [CAP. 366 R . E . 2019] this court has only jurisdiction to revise decisions of



the arbitrators and not deputy registrars. This is so because the Written Laws (Miscellaneous Amendments) (No. 2) Act No. 3 of 2020 via section 67 which added paragraph (b) to section 50(2) recognizes the deputy registrar as part of the High Court. In borrowing the wisdom of my learned Brothers and Sisters who observed the same recently, I wish to start with the case of **Andalus Corner Limited vs Happyness J. Kikoti & Another**, Labour Revision No. 301 of 2021, High Court at Dar es Salaam at page 5 where it was held that:-

"... there is no dispute that this court does not have jurisdiction to entertain an application for revision against a decision of the Deputy Registrar issued on execution."

Also, in the case of Rose @ Tanna Ally Nyabange vs Athuman Ally Nyabange (administrator of the estate of the late Warioba Nyabange) & 2 Others, Misc. Civil Application No. 15 of 2022, High Court at Mwanza at page 8 that: -

"As correctly submitted by the counsel for the 1st respondent this court lacks jurisdiction to revise the order of the Deputy Registrar."

The basis for the above holding is the amendment of the law making Deputy Registrar part of the court thus his decision is the decision of the same court. It follows therefore that no court can revise its own decision. The decision




of the Deputy Registrar in execution can only be referred to this court by way of review, as the only means the court can have a hand in its own decision.

By way of passing, incompetency of this matter before the court is not only limited to it being application for revision as seen above, but it also touches to other areas as well given the circumstances pertaining to it. In this application, even if this court had held to have jurisdiction to revise the decision of the Deputy Registrar this matter would still not be attainable for being *omnibus*. From the notice of application filed the application is started to be challenging the decision in execution application no 545/2020 but all the prayers are in relation revising another application, execution application no 150 of 2012. In Law such kind of applications are commonly referred to as omnibus application and they are not maintainable in law. In the cases of **Daudi Lengiyeu Vrs Dr. David E shungu Civil Appl. No. 28 of 2015 (unreported), Bibie Hamed Khalid V Mohamed Enterprises Ltd and Two others, Civil Appl. No. 6 2011, (unreported), and Seleman Seif Yahaya Delo and Fred Gedy, Civil App no. 6 of 2015** the position of the law is that *omnibus* application is defective and consequently incompetent before the court was stressed. In the former case, the Court of

Appeal held that the application for extension of time and application for revision should have been filed separately, thus it struck out the application for being omnibus.

What is to be reasonably concluded from the above finding is that the application before being *omnibus* application for attempting to revision of two distinct decisions in law it would not be attainable. Practice in accordance to the law is to bring different application for each decision.

Based on that the application stands dismissed for this court's lack of jurisdiction. No order to costs. No order as to costs.



M.P. OPIYO,

JUDGE

08/06/2023

