

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 41 OF 2004

CONSOLIDATED HOLDING CORPORATION . . . APPLICANT

VERSUS

PAUL SOLOMON MWAIPYANA RESPONDENT

R U L I N G

ORIYO, J.:

The applicant, Consolidated Holding Corporation, has filed an application under the provisions of Order XXI rule 1 (1) (b), 2 (2) and Section 95 of the Civil Procedure Code 1966 for the following:-

“a) That the Decreeholder PAUL SOLOMON MWAIPYANA be called to show cause why payment made to him on the decree should not be recorded as certified.”

In response, the respondent, filed a Notice of Preliminary Objection as follows:-

“As long as the matter concerns the execution of the decision of the Conciliation Board as a Decree, this Honourable Court lacks the necessary jurisdiction to entertain this application”

The respondent was represented by Mr Ndolezi, learned counsel and the applicant was represented by Mrs Kashonda, learned counsel.

The preliminary objection is based on a decision of the Court of Appeal in the case of PAUL SOLOMON MWAIPYANA vs NBC HOLDING CORPORATION in Civil Appeal No. 68/01, Dar es Salaam, (unreported). The relevant portion of the Court of Appeal decision is found at pp 13 – 14 of the typed judgment which states as follows:-

“Consequent upon this decision, there remains the decision of the Conciliation Board to reinstate the appellant to be implemented. However we are aware of the fact that with the dissolution of the National Bank of Commerce Limited with effect from 30/9/1997, it is not feasible to effect physical reinstatement of the

appellant at this time. It would be futile to make an order to that effect. In the event, it is ordered that the appellant is to be paid his entitlements applicable under the terms of employment from 28/5/96, when he was dismissed to 30/9/1997, when the National Bank of Commerce Ltd was dissolved."

It is Mr Ndolezi's submission that since the Decree for Execution is that of the Conciliation Board; the lowest Court is to carry out the execution; that is, the District Court or the Resident Magistrates Court and not the High Court. Mrs Kashonda disputes that the decision of the Conciliation Board is capable of being executed. Her arguments in support hinge on the interpretation of the Court of Appeal decision on:-

1. Whether this is the execution of the decision of the Conciliation Board
2. Whether the Court of Appeal ordered execution of the decision of the Conciliation Board

In the course of arguing the preliminary objection, part of their submissions were on the merits of the application itself. It is obvious that the objection goes to the root of the subject matter of the

application and in order to determine it the merits of the application have to be looked into.

Under the circumstances, I reject the preliminary point of objection that this court has no jurisdiction to determine the application. The same should form part of the arguments in the main application.

Accordingly the main application to proceed on merits on 5 December 2005.

It is ordered.

(K.K. ORIYO)

JUDGE

532 Words