THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

MISC. LABOUR REVISION NO. 4 OF 2022.

(From Labour Execution No. 10 of 2021, in the High Court of Tanzania, at Iringa, Original Labour Dispute No. CMA/IR/MAF/17/2019, in the Commission for Mediation and Arbitration for Mufindi, at Mafinga).

MUFINDI TEA AND COFFEE LIMITED.....APPLICANT

VERSUS

VALERIAN JOSEPH ASSEY.....RESPONDENT

RULING

26/07 & 07/10/ 2022.

UTAMWA, J:

The applicant, MUFINDI TEA AND COFFEE LIMITED was aggrieved by an order of the Deputy Registrar of this court in Labour Execution No. 10 of 2022 delivered on 24th February 2022 (The impugned order). She thus, filed the present application, moving this court for the following orders;

1. That, this Honourable court be pleased to apply its mind to interpret the points of law and issues of facts arising from Labour Execution No. 10 of 2021 and the warrant of attachment order dated 24th February 2022 (Deputy Registrar) set aside and quash the same.
2. That this Honourable court be pleased to make an order that the order made on 24th February 2022 by the Deputy Registrar was improperly procured.
3. That this honourable court be pleased to make an order that there is an error material to the merits of the said order involving injustice.
4. Any other order this honourable court may deem just and fit to grant

The application is preferred by way of Chamber Summons. It was made under Rules 24(1) (2), (a), (b), (c), (d), (e) and (f), 24(3), (a), (b), (c) and (d), 24(11), 28(1), (b), (c), (d) and (e), 55(1) and (2) of the Labour Court Rules, GN. 106 of 2007 (henceforth the LCR). It was also based on any other enabling provisions of the law. The application was supported by an affidavit of Mr. Moses Ambindwile, the applicant's counsel.

On the other hand, the respondent, VALERIAN JOSEPH ASSEY through his counsel, did not contest the applicant's application (as per the proceedings dated 26th July, 2022). He did not thus, file any counter affidavit.

The applicant's counsel's affidavit essentially deponed that, the respondent had lodged a complaint in the Commission for Mediation and

Arbitration (the Commission) against the applicant for discrimination and unfair termination against him. The dispute was decided in his favour. Aggrieved by the said decision, the applicant filed in this court an application for extension of time so that she could file her application for revision out of time. However, the application was struck out for being incompetent. The respondent then applied for execution of the award. The deputy registrar then made the impugned order for execution by attaching some properties. Nonetheless, the order is tainted by irregularities.

As I hinted earlier, the respondent did not object the applicant's application. The learned advocate for the applicant thus, prayed for this court to adopt the reasons in the chamber summons and affidavit and grant the application. He did not prefer to make any submissions to amplify the contents of the affidavit.

I have considered the applicant's affidavit, the record and the law. In my settled opinion, the fact that the application at hand is unopposed is in law, not the only reason for granting this application. The merits of the application must thus, still be tested according to the law. This is because, courts of law are enjoined to decide matters before them in accordance with the Constitution of the United Republic of Tanzania, 1977, Cap. 2 RE. 2002 (The Constitution) and the law. They do not decide matters according to the consensus of the parties to proceedings. This position was underlined in the case of **John Magendo v. N. E. Govan (1973) LRT n. 60**. Furthermore, the Court of Appeal of Tanzania (The CAT) emphasized it in the case of **Tryphone Elias @ Ryphone Elias and another v. Majaliwa Daudi Mayaya, Civil Appeal No. 186 of 2017, CAT at Mwanza**, (unreported

Ruling). In that precedent, the CAT held, *inter alia* that, the duty of courts is to apply and interpret the laws of the country. It added that, superior courts have the additional duty of ensuring proper application of the laws by the courts below. I will therefore, proceed to test the merits of the application at hand irrespective of the fact that it is unopposed.

The issue before me is therefore, whether the application at hand is meritorious. Paragraph 6 of the applicant's affidavit in the matter at hand, shows that, the impugned order had two irregularities which are the only reasons for the application itself. I will test the two irregularities one after another.

The first irregularity according to paragraph 6(i) of the affidavit is that, the impugned order was issued without the applicant being afforded the right to be heard on the application for execution. In my view, this contention is untenable. This is because, the record of the application for execution itself (No. 10 of 2021) shows that, the applicant was notified of the application and her counsel appeared for some times before the Deputy Registrar; see for example on 20th July 2021 and 7th September, 2021 (when one Mr. Gift, learned counsel appeared for the applicant/judgment debtor). Again, on 23rd November, 2021 both parties were represented before the Deputy Registrar. The applicant herein was represented by one Ms Hapiness Kessy (apparently her principle officer, i. e. HRO). On that date, the matter was adjourned for hearing to 24th February, 2022. Nonetheless, on the said 24th February, 2022, neither the applicant's principle officer nor her counsel appeared before the Deputy Registrar. It is also not shown in the record that the applicant had sent a notice of absence to the Deputy Registrar to show reasons as to why

the matter had to be adjourned. On the other hand, the respondent's counsel entered appearance on that date of hearing. Such respondent's counsel thus, prayed to proceed with the hearing without the applicant since she had been made aware of the hearing date, but defaulted appearance for no reason. The Deputy Registrar then made an order granting that prayer and proceeded without the applicant in making the impugned order for execution.

In my view therefore, the trend demonstrated by the applicant before the Deputy Registrar is inconsistent with a genuine litigant. In fact, that conduct was of negligent party to court proceedings. She cannot therefore, blame the Deputy Registrar for making the impugned order under such circumstances. Indeed, while I agree with the applicant that the right of a party to be heard is fundamental and courts cannot easily violate it, I do not agree with her that a court of law has to keep on adjourning a case waiting for a negligent part to appear before it at his/her own whims for fear of breaching his/her fundamental right to be heard. A party who defaults appearance before the court while aware of the date fixed for hearing, denies himself/herself the right to be heard, and he/she has no body to blame except himself/herself. Under such circumstances a court of law is enjoined to proceed without such defaulting party since, it is trite law that, cases are adjourned for good reasons only. In the matter at hand, the Deputy Registrar had no reason, let alone a good one, for adjourning the matter on the date when he made the impugned order, hence a justification for the course he opted for.

On the other hand, the applicant in the matter at hand claims that the Deputy Registrar committed an irregularity by making the impugned order. Nonetheless, no law was cited by the applicant as the violated one under the circumstances under which the impugned order was made. Besides, the applicant's counsel opted not to make any submissions before this court to explain on the law that had been violated by the impugned order (if any) under the circumstances demonstrated above. He did not however, adduce any reason for not doing so. I therefore, dismiss the complaint by the applicant in relation to the first alleged irregularity in the impugned order.

The second irregularity as per paragraph 6(ii) of the affidavit is that, the impugned order was issued under a wrong case number. In my view this ground also fails. This is because, the record shows that, the warrant of attachment of movable property given under the seal of this court by the Deputy Registrar dated 24th February 2022 contained the title of Labour Execution Case No. 10 of 2021 which tallied with the reference numbers in the document that had instituted the application for execution. The Execution No. 8 of 2021 referred to in the applicant's affidavit featured in the letter of this court to Majembe Auction Mart (appointed court broker). That, might however, been due to typographical errors. Such an error in my view, cannot vitiate the impugned order or warrant the applicant to make the present application to this court.

In my further view, such kind of slips are curable under the principle of overriding objective. This principle has been underscored in our written laws. It essentially requires courts to deal with cases justly, speedily and have regard to substantive justice as opposed to procedural technicalities.

The principle was also underscored by the CAT in the case of **Yakobo Magoiga Kichere v. Peninah Yusuph, Civil Appeal No. 55 of 2017, CAT at Mwanza** (unreported) and many other decisions by the same court.

Besides, the applicant termed the error under discussion as an irregularity, but again, no law was cited as the one which had been breached by the impugned order. The applicant's counsel did not also wish to make any submissions to explain on the violated law and he gave no reason for the abstinence. I therefore, also dismiss the second alleged point of irregularity.

Before I conclude, I feel indebted to make some remarks on the passiveness of the learned counsel for the respondent in the matter at hand for the sake of justice and better future practice. The respondent did not file any counter affidavit in objecting the application despite the fact that he was the one who had prayed before the Deputy Registrar to proceed without the applicant and the prayer was granted, hence the impugned order. It is not clear as to why the applicant had changed mind to the extent of being inactive in objecting the application at hand. In fact, by this remark, I am not suggesting that each application before a court must be objected by the respondent. My point here is that, if the parties agree on an application which lacks merits, it is better for them to agree for the withdrawal of the application from the court and settle it outside court. This will give relief to courts and make them concentrate with other genuine and contentious matters. Indeed, parties in civil proceedings are at liberty to compromise their rights, and courts are enjoined to respect their settlements as long as they do not offend any law or public interest/policy; see the guidance by the

CAT in the case of **Ibrahim Said Msabaha v. Lutter Symphoriam Nelson and the Attorney General, Civil Appeal No. 4 of 1997, CAT, at Dar es Salaam** (unreported).

The parties to this court must also be alerted that, courts of law in this land are enjoined to dispose of cases speedily. This is a constitutional requirement; see Article 107A(2)(b) of the Constitution. Parties to court proceedings are therefore, also enjoined to attend their cases with sufficient seriousness so that they can be timely disposed of. I recently underscored this legal position in the case of **The Registered Trustees of Works of Mary (Focolare Movement) in Tanzania v. National Bank of Commerce Limited and another, Civil Case No. 04 of 2020, High Court of Tanzania, at Iringa** (unreported order) and I reiterate it here. It follows thus, that, if parties wish to agree on unmerited proceedings which may end up delaying case as the parties in the present case wanted to do, they should resort to the settlement out of court as suggested earlier. Otherwise, their consensus will not be accepted by the court because, such course will obstruct the court from complying with the constitutional requirement of disposing cases speedily mentioned above. Courts of this land can never do so.

Now, due to the above reasons, I find that, the application at hand lacks merits, and I accordingly answer the issue posed above negatively. I consequently dismiss the application in its entirety. I would have ordered the applicant to pay costs of this application to the respondent, but I will not do so. This is because, the respondent who would be entitled to the costs did

not contest the application at all as shown previously. I thus, order that each party shall bear its own costs. It is so ordered.

JHK UTAMWA

JUDGE

07/10/2022.

07/10/2022.

CORAM; JHK. Utamwa, J.

For Applicant: Mr. Ambindwile, adv., and Mr. Mwakatumbula, adv.

For Respondent: absent.

BC; Ms. Gloria.

Court; Ruling delivered in the presence of Mr. Moses Ambindwile, learned counsel and Mr. Joshua Mwakatumbula, advocate both for the applicant, this 7th October, 2022.

JHK UTAMWA

JUDGE

07/10/2022.