

TANZANIA / JUDGMENT

20151029 TZHC Dar es Salaam

COURT
TZHCDECIDED
29 October 2015

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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CIVIL REVISION NO. 45 OF 2009 Original RM Misc. Civil Case NO I of 2009 at Kisutu KAHAMA MINING CORPORATION LTD APPLICANT V LUCAS B. NYANDA RESPONDENT Date of last Order 12/10/2015 Date of Ruling 29/10/2015

RULING

A. Shangwa, J This is an application for revls1on of the order issued on 26 th August, 2009 by the Court of the Resident Magistrate at Kisutu in RM Misc. Civil Case NO 1 of 2009, requiring the General Manager Kahama Mining Corporation Ltd to comply with the decision of 2 the Minister for labour. At paragraph 1 of its chamber summons, the Applicant Kahama Mining Corporation states that the compliance order issued by the Court of the Resident Magistrate at Kisutu is unfair and was un-procedurally issued against it. In their written submissions made on behalf of the Applicant, M/S Leo Attorneys submitted that in view of the fact that on 24 th September, 2004, the parties reached an amicable settlement and signed a deed of settlement when the matter was pending before the Conciliation Board of Ilala and as the Applicant was in the middle of discharging the terms of the deed of settlement, it was incorrect for the Conciliation Board of Ilala to hear the matter between the parties and make a decision from which the 3 Respondent appealed to the Minister who passed an order against the Applicant to pay the Respondent Tshs 184,382,000/=~ Furthermore, M/S Leo Advocates submitted that it was incorrect for the Court of the Resident Magistrate Kisutu to enforce the Minister's decision by ordering the Applicant's various motor vehicles to be attached and sold in order to recover the afore said sum. In my op1n1on, I agree with M/S Leo Attorneys that as the parties had agreed to settle the matter between themselves out of the Conciliation Board and signed a deed of settlement to that effect which was registered, it was unprocedural for the Conciliation 4 Board to hear the matter between them and pass judgment. In fact, the appeal to the Minister for labour from the decision of the Board which was arrived at unprocedurally is of no effect. The decision of the Minister is void. For that matter, the order of the Court of the Resident Magistrate at Kisutu requiring the General Manager, Kahama Mining Corporation (Applicant) to comply with the void decision of the Minister for labour is unlawful and I quash it. The deed of settlement of the matter between the parties out of the Board which was signed by the parties is the one which should continue to be honoured by the Applicant until full satisfaction of its clauses. 5 Finally, I grant this application and order that each party should bear its own cost. ~ A. Shangwa JUDGE 29/10/2015

open Court this 29 th day of October, 2015 in the presence of Mr. Victor Kessy for Applicant and in the absence of the Respondent. - A .Shangwa JUDGE 29/10/2015

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