

TANZANIA / JUDGMENT

malmo development coltd vs labour commissioner another 2021 tzhcld 46 7 december 2021

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7 December 2021

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THE HIGH COURT OF TANZANIA LABOUR DIVISION AT PAR ES SALAAM REVISION
APPLICATION NO. 288 OF 2021 BETWEEN MALMO DEVELOPMENT CO. LTD APPLICANT THE
LABOUR COMMISSIONER & ANOTHER RESPONDENT

RULING

Last order 03/12/2021 X> Date of Ruling 07/12/2021 B.E.K. Mganga, J ~ (Q) On 14th June 2021, MalmOxDev^lopmnt Co. Ltd, the Applicant, filed this application after <^&ng aggrieved by the decision of Deputy Registrar in Misc. Applicatk^bNo. 88 of 2021 so that he can be relieved from - execution proceedings No. 455 of 2020 by lifting | warrant of attachment issued) on 11th March 2020. Brief facts leading to the said executionfprdceedings and this application are that, on September 2020 Labour Officer issued Compliance Order against the applicant to pay his employees TZS 7,700,000/= as salary arrears, the same was not honoured by the applicant. Due to such non-compliance, the Labour officer filed Execution No. 455 of 2020 before this Court and warrant of attachment was issued. i bn 29th March 2021, applicant filed Miscellaneous Application No. 88 of 2021 before Deputy Registrar to challenge execution but the same was dismissed. Aggrieved with the decision of Deputy Registrar, applicant filed this application seeking the court to revise the decision of salary dispute, the compliance order could have not been issued. He argued that, the order was supposed to be served to the applicant in terms of section 46(1) of the Labour Institutions (Cap 300 R.E 2019). The effect of failure to serve the compliance order denied the applicant 2 right to object, the compliance order and the same was heard exparte on 21st September 2020 because officers of the applicant was outside the region. Mr. Bashaka submitted further that on the same date of hearing, a compliance order was issued, and execution was filed on 24^eptember \\\

2020. |He argued that a person who is aggrieved by eomplianceporder could object within 30 days to the Labour Commissioner^if the objection is dismissed by the Labour Commissioner, then the employer can appeal to this icourt in terms of Section 48 (1) of<^ej.abour Institutions (Cap 300 R.E 2019). (Tj) Mr. Basheka further submittedxthat since applicant became aware of the I compliance orders or^ 15th March 2021, she failed to

lodge objection to the Labour Commissioner, because they were not served I <)) with compliance order; He concluded that it was not proper for Deputy Registrar to continue with execution for unserved compliance order and <X i (& allow it to be enforced. He thus prayed for the application to be allowed. On the other hand, Mr. Juma Laizer, a Labour officer, submitted that the respondent followed procedures in issuing the compliance order. He argued that an order to the applicant to appear was issued under Section 45(1) of the Labour Institutions (Cap 300 R.E 2019) as the applicant was called on 9th September 2020 and that the same was received by the applicant on 10th September 2020 by Josephine Swai for the applicant. He submitted that a total of six people from the applicant's office were called on 14th September 2020 the date they were required to appear contrary to what is submitted on behalf of the applicant. He went on that applicant failed to honor the* no Jcg as a result, on 21st September 2020 compliance order was issued. Mr. Juma submitted that the respondents went to the applicant's office for purpose of serving the compliance order, but they were not allowed to enter the office. Facing that difficulty, respondent went to the street leader's office that applicant can be served in terms of Section 43 of the Labour institutions [Cap 300 R.E 2019], but she refused to appear. That, due to the said refusal by the applicant, the hamulate leader for Oystorse ordered the order that applicant refused service. Mr. Juma/Labour officer for the respondents submitted further that, after 30 days, Labour Officer filed an application for execution. That, on 6th October 2021 when the court issued summons, applicant refused to accept the said summons but on 9th November 2020, one Martin Mfinanga appeared in Court. Mr. Juma, went on that, in terms of Section 48 of the Labour Institutions [Cap 300 R.E 2019] applicant was supposed to file objection. He concluded by submitting that applicant intends to delay execution and prayed the application be dismissed. In rejoinder, Mr. Bashaka submitted that, arguments that applicant refused to accept the compliance order is hearsay as there is no proof of service of the compliance order. He maintained that the compliance order was not served and pray that the application be granted. This matter cannot detain my mind. I have read Section 46(1) of the Labour Institution Act [Cap 300 R.E 2019] and find that it empowers the Labour Officer to issue compliance order, In a prescribed form, if the Court is satisfied that an employer has not complied with a provision of the Labour laws. In terms of, section 46(2)(a) of the said Act, the Labour officer has to serve the compliance order to the employer, any registered trade union with members among the employees affected by the order and each employee affected by the order /terms of section 47(1) of Cap 300, supra, the applicant (employer) was supposed to file objection in writing within 30 days of receipt of that order. In terms of section 47(2) of the same Act, applicant was supposed to serve the objection to the labour commissioner, any registered trade union with members among the employees and display a copy of the objection in a prominent place accessible to the employees affected by the order. But this was not done. It was argued by Mr. Bashaka, the personal representative of the applicant that applicant could not file objection as she was not served. This argument was resisted by Mr. Juma who narrated what happened. It is my view that, Mr. Bashaka's argument is barren. Even if for the sake of argument, I accept that applicant was not

served applicant was & supposed to comply with the provision of section 47(3) of the Labour Institutions Act [cap.300 R.E, 2019], The said section provides:- "47(3) The Labour Commissioner, on good cause, may condone a late objection made in terms of subsection (4)(7) of the Act. In the application at hand, there is no proof and it was not submitted that applicant filed application for condonation before the Labour Commissioner required by the above quoted provision. In other words, applicant did not comply with the law until when an order to attach Motor Vehicle with registration No. T.443 DSH make Toyota 1ST prop of the applicant was issued. It is clear that applicant has filed misapplication for revision after her application to lift an order for attachment was dismissed. Again, this application is bound to fail on ground that applicant did not comply with the above cited provision. More so, the application for revision is misconceived. The only remedy that was available to the applicant is to comply with the provisions of section 47 of the Labour Institutions Act [cap.300 R.E. 2019] and if aggrieved by the decision of the Labour Commissioner, she was supposed to appeal before this court in terms of section 48(1) of Cap. 300, Supra. If at all she was out of time, she was supposed to file application for condonation in terms of section 48(3) of Cap. 300, supra. Applicant has filed this application seeking the court to revise the proceedings in Miscellaneous Application No. 88 of 2021. This, in no doubt is not an appeal. As the applicant filed application for revision, instead of an appeal, I will therefore not consider all arguments advanced by both sides for and against this application as the same is incompetent. For all what I have pointed hereinabove, I hereby struck out the application for being incompetent. B.E.K. Mganga JUDGE 07/12/2021 7

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Prepared on 14 October 2026 · Esheria