

TANZANIA / JUDGMENT

MISC NO 13542 OF 2024

MWANAHAMISI ATHUMANI VRS HIGH VIEW ACADEMY DAY CARE

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1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LABOUR DIVISION AT PAR ES
SALAAM MISC. LABOUR APPLICATION NO. 13542 OF 2024 CASE REFERENCE NO.
202406091000013542 (Originating from Dispute No. CMA/PWN/KBH/44/21/2023) BETWEEN
MWANAHAMISI ATHUMANI.....APPLICANT VERSUS HIGH VIEW
ACADEMY DAY CARE 1st RESPONDENT PETER DICKSON
KABANZA..... 2nd RESPONDENT

RULING

Date of last Order: 12/08/2024 Date of Ruling: 05/09/2024 MLYAMBINA.J. The Applicant was employed by the Respondents in the position of a teacher by the 1st Respondent. It was a six-month contract renewable commencing on 21/09/2021 with the monthly salary of TZS 200,000/=. The contract was renewed after its expiry. The Applicant worked for eleven months without salary payment. Upon claim, the Applicant was terminated from employment unfairly and without complying with the legal procedures on 28/02/2023. Thereafter, the Applicant lodged a complaint before the CMA. Upon hearing on 3/11/2023, the Applicant was awarded seven months' salary at the tune of TZS 1,400,000/= and one month notice at the tune of TZS 200,000/= giving a total of TZS 1,600,000/=. In the process of executing the CMA Award through Execution No. 650 of 2024 before this Court, the Applicant failed to know the properties of the Judgement debtors, hence this application under Rule 55(1),(2) and Rule 24(1)/(2)(a)/(b),(c)/(d)/(e)/(f)/ 3(a),(b)/(c)/(d) and 28(1)/(a)/(b)/(c),(e) and 55 (1) and (2) of the Labour Court Rules No. 106 of 2007 and Order XXI Rule 36 of the Civil Procedure Code [Cap 33 R.E 2019]. The Applicant is seeking for this Court to issue an order for arrest and detain the Judgement Debtors. The application has been taken at the instance of Robert Motwe Masanja, Personal Representative of the Applicant and it is supported with the affidavit of the Applicant. Despite of serving the Respondent to appear on 25th June, 2024, 2nd July, 2024 and 23rd July, 2024 the Respondents never heeded to the order. Hence the application was heard ex-parte. Essentially, the basis of the Applicant to come up with this application is hinged on two reasons: First, the Applicant has failed to identify the Respondents' properties intentionally refused to appear before this Court trying to delay a right for the

Applicant to enjoy the fruits of her Award. It is the principle of law through Order XXI Rule 39(2) of the CPC (supra) that before making an order under sub rule (1) the Court may take allegation of the decree holder touching any of the following matters:

- (2) Before making an order under sub-rule (1), the court may take into consideration any allegation of the decreeholder touching any of the following matters, namely-
 - (a) the decree being for a sum for which the judgment debtor was bound in any fiduciary capacity to account;
 - (b) the transfer, concealment or removal by the judgment debtor of any part of his property after the date of the institution of the suit in which the decree was passed, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decreeholder in the execution of the decree;
 - (c) any undue preference given by the judgment debtor to any of his other creditors;
 - (d) refusal or neglect on the part of the judgment debtor to pay the amount of the decree or some part thereof when he has, or since the date of the decree has had, the means of paying it;
 - (e) the likelihood of the judgment debtor absconding or leaving the jurisdiction of the court with the object or effect of obstructing or delaying the decree-holder in the execution of the decree. It is also a principle of law that the object of granting an application for detaining a Judgement Debtor as a Civil Prisoner is to enable the Decree holder to realize the Awarded amount especially when the Judgement Debtor's conducts are contumacious. (See the case of Zhang Zaiguo v. Epoch Mining (T) Ltd, Misc. Labour Execution No. 26 of 2021 Labour Division High Court at Mbeya). From the record herein, there are two Respondents. The 1st Respondent is the legal entity. It cannot be detained as a Civil Prisoner. The 2nd Respondent is the natural person. He is the Director and owner of the 1st Respondent. If not sued, he cannot be detained as a Civil Prisoner unless there is lifting of the corporate veil. It follows, therefore, the best way of enforcing the Award against the Corporate person is for the Applicant to make an application to lift the corporate veil in order to enforce the execution against the Director of the Company. However, the 2nd Respondent has been sued in person and the Award was granted against the Company and him as the Director of the 1st Respondent. It is clear that the Respondents are indebted to the Applicant at the tune of TZS 1,600,000/= arising out of employer/employee relationship. Further, it is clear that ever since the Award was issued on 3/11/2023, the Respondents have refused to pay, and worse, they have refused to appear before this Court. In the circumstances of the above, I hereby grant the application. The 2nd Respondent be arrested and detained as a Civil Prisoner till payment of the awarded sum of TZS 1,600,000/= to the Applicant. It is so ordered. Y. J. MLYAMBINA JUDGE 05/09/2024 Ruling delivered and dated 5th September, 2024 at 14:21 hours in the presence of the Applicant in person and in the absence of the Respondent. JUDGE 05/09/2024

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