

TANZANIA / JUDGMENT

SARA TARIMO V

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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT DAR ES SALAAM MISCELLANEOUS
APPLICATION NO. 32408 OF 2024 SARA TARIMO
APPLICANT VERSUS DAR ES SALAAM WATER & SAWAGE AUTHORITY (DAWASA)
.....RESPONDENT

RULING

Date of Last Order: 21/02/2025 Date of Ruling: 14/03/2025 B. E. K. Mganga, J. It is undisputed by the parties that, Sara Tarimo, the abovenamed applicant, was an employee of the Dar es Salaam Water and Sewage Authority (DAWASA), the abovenamed respondent. It happened that respondent terminated employment of the applicant as a result, the latter filed labour dispute No. CMA/DSM/ ILA/ 586/2011 before the Commission for Mediation and Arbitration (CMA) complaining that she was unfairly terminated. On 20th October 2015, Hon. Mkombozi Z.B, arbitrator, issued an award in favour of the applicant that termination was unfair and 1 ordered respondent to reinstate applicant and further pay her twelve months salaries. It is also undisputed by the parties that, after the said award, applicant filed Execution No. 402 of 2022, as a result, on 13th December 2022, Hon. S.B. Fimbo, Deputy Registrar, the executing officer, issued certificate of payment directed to the Permanent Secretary, Ministry of Finance and planning so that applicant can be paid TZS 127,544,130/= to satisfy the CMA award. On 24th December 2024, applicant filed this application seeking the court (i) to lift corporate veil of the respondent so that, Mkama Bwire, the Chief Executive Officer of the respondent can be held personally liable to satisfy the abovementioned CMA award. After being served with the application, respondent filed the Notice of opposition, the counter affidavit and the notice of preliminary objection. In the notice of preliminary objection, respondent raised two preliminary objections namely: -

- (i) That, the application contravenes section 16(3) of the Government Proceedings Act, Cap. 5 R.E. 2019 read together with Water supply and sanitation Act No. 5 of 2019 and 2 (ii) That, applicant's affidavit in support of the application is incurable for contravening Rule 24(1) (a), (b), (c), (d), (e) and (f) and rule 24(3) of the Labour Court Rules, GN. No. 106 of 2007. When the application was called on for hearing of the preliminary objection, Mr. Amos Masala, State Attorney appeared and argued the aforementioned preliminary objection for and on behalf of the respondent while Mr. Aidan Kitare, advocate entered for and on behalf of the applicant. Arguing in support of the 1st preliminary objection, Mr. Masanja submitted that,

in terms of section 16 of the Government Proceedings Act, Cap.5 R.E. 2019, property owned by the government are not subject to attachment. He added that, in terms of the said section, officers of the government are not liable for arrest to pay any debt of the government. Mr. Masanja went on that, respondent is a government institution hence covered by the said section. He further submitted that, section 9(1) of Water supply and Sanitation Act, No. 5 of 2019 provides that respondent is a government institution. He added that, section 11 of the said Act gives powers the Minister to appoint Board members and the Director of the respondent, which is why, it makes respondent to be a government institution. Mr. Masanja further submitted that, in terms of section 21 of the 3 Written Laws (Miscellaneous Amendment) Act, No. 1 of 2020, government includes Ministries, Local Government Authorities, Independent Departments, Executive Agencies, Public Corporations, Parastatal organisation, Public Companies in which government is a majority shareholder. He concluded that, applicant was supposed to pray to be issued with a certificate of payment that will be directed to the Ministry of Finance. Arguing the 2nd preliminary objection, learned State Attorney submitted that there is no notice of application. He added that, the application at hand is not covered under the exceptions provided for under rule 24(11) of the Labour Court Rules, GN. No. 106 of 2007. With those submissions, learned State Attorney concluded by praying that the application be dismissed. Arguing against the 1st preliminary objection, Mr. Kitare learned advocate for the applicant submitted that, section 16 of Cap. 5 R.E. 2019(supra) that requires a certificate of Payment to be issued was complied with because on 13th December 2022 the date applicant was issued with a certificate of payment by this court in Execution No. 402 of 4

2022. When probed by the Court, counsel for the applicant conceded that the said section does not provide that a veil can be lifted against the government. Mr. Kitare was quick to submit that, applicant has filed this application believing that the court has inherent powers and that it can ensure that its orders are implemented considering that the certificate of payment was issued in 2022. When further probed, learned counsel for the applicant conceded that section 16 of Cap. 5 R.E. 2019 (supra) does not provide time limit within a certificate of payment can be complied with or fully paid. He also conceded that, Order XXI Rule 2A of the Civil Procedure Code, Cap. 33 R.E. 2019 read together with section 15 of Cap. 5 R.E. 2019(supra) provides how to satisfy a decree against the government or officer of the government. In short, counsel for the applicant conceded that there is no provision relating to lifting of veil against the government. In his submissions, counsel for the applicant admitted that the respondent is a government institution. Counsel submitted that, in the chamber summons, applicant prays to lift veil of the respondent, costs and any other order the court may deem fit to grant. In his submissions, Mr. Kitare conceded that, the relief of lifting veil does not comply with the provisions of Order XXI Rule 2A of Cap. 33 R.E. 2019(supra) read together with section 15 of Cap. 5 R.E. 2019(supra). He also conceded that, costs are not awardable in labour cases like the application at hand. He further admitted that any other relief as the court may deem fit are awardable only at the discretion of the court. Despite the fore going, learned counsel for the applicant

maintained that the application is properly before the court and that the court can grant the prayers sought. Arguing against the 2nd preliminary objection, counsel for the applicant submitted that, the application is made under section 38 and 95 of the Civil Procedure Code, Cap. 33 R.E 2019 hence the application is properly before the Court. Counsel submitted that, there is no rule in GN. No. 106 of 2007(supra) governing the application of this nature. With those submissions, counsel for the applicant prayed that the preliminary objections be dismissed for want of merit. The learned state attorney for the respondent had no rejoinder. I have considered submissions of the parties in respect of the preliminary objection that was raised by the respondent. It is undisputed by the parties that respondent is a government Institution. It is also undisputed that applicant was awarded to be paid TZS 127,544,130/= and 6 that, on 13th December 2022, in Execution No. 402 of 2022, Hon. S.B. Fimbo, Deputy Registrar, the executing officer, issued certificate of payment directed to the Permanent Secretary, Ministry of Finance and Planning. It is also undisputed by the parties that applicant has filed this application seeking the Court to lift the veil so that, Mr. Mkama Bwire the Chief Executive Officer of the respondent can be personally liable to satisfy the award of TZS 127,544,130/= in favour of the applicant. It is my considered view that, since respondent is a government institution, it is covered by the provisions of section 16 of Cap. 5 R.E. 2019 (supra) which provides that: - 16.-(1) Where in any civil proceedings by or against the Government, any order, including an order as to costs, is made by a court in favour of a person against the Government or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person, issue to that person a certificate containing particulars of the order: Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs ordered to be paid to the applicant.

- (2) If the order provides for the payment of money by way of damages or other relief, or of costs, the certificate shall state the amount so payable and the Permanent Secretary to the Treasury or such other Government accounting officer as may be appropriate shall, subject as hereinafter provided, pay to the person 7 entitled or to his advocate the amount appearing by the certificate to be due to him together with any interest, lawfully due thereon: Provided that, the court by which any such order as is mentioned in this section is made or any court to which an appeal against the order lies may, if it considers it reasonable to do so direct that, pending an appeal or other legal proceedings, payment of the whole or part of any amount so payable shall be suspended and if the certificate has not been issued may order any such directions to be inserted therein.
- (3) Save as is provided in this section, no execution, attachment or similar process shall be issued out of any court for enforcing payment by the Government of any money or costs referred to in this section; and no person shall be individually liable under any order for payment by the Government or any Government department or any officer of the Government as such of the money or costs. (Emphasis is mine). The above quoted provision of section 16 of Cap. 5 R.E. 2019(supra) has nailed it to the fullest the application at hand. As pointed out hereinabove, applicant is seeking the Court to lift the veil so that the Chief

Executive Officer of the respondent can be liable to pay TZS 127,544,130/= that applicant was awarded. In terms of section 16(3) of Cap. 5 R.E. 2019(supra), that prayer is prohibited and cannot be granted. In short, applicant is praying the Court to grant an order that is contrary to the law. From where I am standing, I cannot grant an order that the law itself has expressly provided that the Court cannot grant. To do what applicant is praying will be violation of the law of which I am not prepared to do. It is my view that since a certificate of payment was issued in favour of the applicant in terms of the quoted section, applicant may make follow up to the responsible officers to ensure that the said amount is paid. There is no room after issuing the certificate of payment for the court to issue any other order requiring the government to satisfy the award or decree in a certain period because the law is silent on the period within which the government must comply with a certificate of payment. It was submitted by counsel for the applicant that this court has discretion and inherent powers to grant the application. With due respect, inherent powers of the Court cannot be used to violate a provision of the law. In the case of Rustamali Shivji Karim Merani vs Kamal Bhushan Joshi (Civil Application 80 of 2009) [2012] TZCA 16 (27 February 2012) the Court of Appeal held inter-alia that:- "In our view, it is an abuse of process to invoke the Court's inherent powers to correct counsel's error or mistake, or condone a flagrant breach of the law..." 9 What counsel for the applicant is seeking the Court to grant, in my view, is clearly a violation of the provisions of section 16(3) of Cap. 5 R.E. 2019(supra) quoted hereinabove. Since the quoted provision of section 16 of Cap. 5 R.E. 2019(supra) provides a procedure on how decrees or award against the government can be executed, applicant has no option other than following that procedure. It is trite law that, where there is a specific law which provides for a certain matter, that law must be followed first. See the case of Salim O. Kabora vs TANESCO Ltd & Others (Civil Appeal No. 55 of 2014) [2020] TZCA 1812 (7 October 2020) wherein the Court of Appeal held inter-alia that:- "... where a certain law provides for a specific forum to first deal with a certain dispute, a resort to it first is imperative before one seeks recourse to court. Where that is not observed, the attendant court's decision is rendered a nullity..." It is my further considered opinion that, this court cannot use its discretionary powers to grant the prayers sought by the applicant because there is nothing warranting this court to use its discretion. I am of that view because, discretion must be used judiciously based on what is fair, under the circumstances and guided by the rules and principles of law as it was held by the Court of Appeal in the case of Mza Rtc Trading 10 Company Limited vs Export Trading Company Limited (Civil Application No. 12 of 2015) [2016] TZCA 12 (27 October 2016). For all what I have discussed hereinabove, I sustain the 1st preliminary objection raised by the respondent and dismiss this application. I find that there is no need to labour on the 2nd preliminary objection because the 1st preliminary objection has disposed the whole application. Dated at Dar es Salaam on this 14th March 2025. B. E. K. Mganga JUDGE Ruling delivered on this 14th March 2025 in Chambers in the presence of Aidan Kitare, Advocate for the Applicant and Amos Enock, State Attorney for the Respondent. B. E. K. Mganga JUDGE 11

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