

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT MUSOMA  
EXECUTION NO 17 OF 2020**

**LABOUR OFFICER \_\_\_\_\_ APPLICANT**

**VERSUS**

**OPERATION MANAGER MMG GOLD LTD \_\_\_\_\_ RESPONDENT**

*(Arising from Orders of this Court Hon. Moyo DR, in Execution No 25 of 2019 dated  
17.10.2019)*

**RULING**

Date of last order; 06.05.2020  
Date of Ruling; 15.05.2020

**GALEBA, J.**

This is an application for execution by the Labour Officer seeking to enforce payment of salaries due to 17 workers currently employed by **MMG GOLD LTD** at its mining related operations at Nyaramndarira, Seka village in Musoma district. The salaries of the workers are for 8 months running from August 2019 or thereabouts onwards.

The background to the application is that around mid-2019 some chemical materials called carbon estimated to contain more than 2 kilograms of gold worthy Tshs 177,000,000/= and two excavator control boxes were stolen and a number of employees were suspected to have participated in the theft including the employees that the applicant is representing. When the alleged theft

happened, it appears the respondent reported the matter to the police for investigation and possible criminal prosecution, but in addition to that step, the employer suspended payment of salaries to the suspects pending finalization of the criminal investigations. It is this act of suspending payment of their salaries that aggrieved 26 workers, who presumably (because there is no written complaint) approached the applicant, who on 29.08.2019 sent a COMPLIANCE ORDER to the respondent, ordering the latter to pay workers their JULY 2019 salaries amounting to Tshs 18,012,475/= and to do so in two days of receipt of the that order.

Upon receipt of the order of the Labour Officer, the respondent responded the next day on 30.08.2019 by explaining the incident of the theft and that the company would not pay the salaries until the police concluded their investigations relating to the disappearance of the carbon and the control boxes. On receipt of that response the labour officer on 03.09.2019 approached this Court and filed **EXECUTION NO 25 OF 2019** seeking to enforce the COMPLIANCE ORDER by payment of Tshs 18,012,475/= being unpaid salaries in respect of 25 workers for the month of July 2019. In that application for execution the COMPLIANCE ORDER was cited as a DECREE dated 29.08.2019 for which enforcement was being sought. However, in that application, Hon. Moyo DR, made orders that the employer should pay the 26 employees while the matter was under investigation. Following that order dated 17.10.2019 in **EXECUTION**

**NO 25 OF 2019**; the respondent paid Tshs 18,012,475/= to the workers in discharging the the COMPLIANCE ORDER and EXECUTION NO 25 OF 2019.

It seems, however that other than the salaries for July 2019 which was duly paid as highlighted above, the respondent did not pay any other salaries from August 2019 onwards. Following that withholding of salary payments from August 2019 onwards, on 23.04.2020 the applicant filed the present application moving this court to levy attachment and order sale of motor vehicle with registration **no T 913 AVM Toyota Land Cruiser Prado, T 872 AGW Toyota Land Cruiser, Motor truck with registration no T 437 CBG Fordeni Tipper and T 679 CAM Water Bozer** in realization on Tshs 105,683,454/= payable, this time, to only 17 employees. When this application was assigned to me on 04.05.2020 I made orders summoning the labour officer for directions; in which session this Court would ascertain whether the application was competent before the court following the very obvious deficiencies on record. The labour officer appeared before the Court on 06.05.2020. The issues that he would address the Court upon were the following;

Although the application showed that it was seeking to enforce a decree dated 17.10.2019 awarding Tshs 105,683,454/=, but there was no such decree on record.

1. Whether there was on record a Compliance Order for enforcement by this Court as required by law.

When this application came for orders in relation to the above matters, Mr. Venance Kadago, the labour officer appeared and I put the above queries to him.

In respect of the first issue he submitted that to him the decree was the order of Deputy Registrar dated 17.10.2019, which ordered the employer to continue paying salaries to workers until such time that the police investigations were finalized. On the second query he stated that because there was a decree from the High Court in **EXECUTION NO 25 OF 2019** there was no need of any other compliance order, so there was none.

Rule 48 (with side notes; "**enforcement of court orders**") of the **Labor Court Rules GN 106 of 2007** (the Court Rules) is the provision which provides or lists the types of decisions that this Court may enforce within the scheme of the labour laws. Rule 48(4) of the Court Rules provides as follows;

***"(4) For purpose of this rule, "decision" means any decision, judgment, award, decree, ruling, settlement agreement or Order made by the Court, the Labor Commissioner, Commission or other body authorized by law to have its decision or orders enforced by the court."***

That is to say, this Court can only process execution in respect of orders made either by the Court, the Labor Commissioner, the

Commission for Mediation and Arbitration or other bodies authorized by law to have its decision or orders enforced by the Court.

In this case, Mr. Kadago admitted that there was no Compliance Order from the Labor Commissioner but he was seeking to enforce an order from the Deputy Registrar of this Court in **EXECTUION NO 25 OF 2019**. That argument is very weak for the reasons that; *first*, that order is not one of the orders listed at Rule 48(4) of the Court Rules. *Secondly*, whereas the Deputy Registrar was presented with an application for enforcement of payment of Tshs 18,012,475/= which amount was duly paid thereby discharging those proceedings, in this fresh application the amount sought to be executed is Tshs 105,683,454/=, in respect of which the respondent never received a compliance order for the company to exercise its right of objecting or commenting on it as provided by **section 47(1) of the Labour Institutions Act 2004** (the Labor Institutions Act). Deciding otherwise would be to deny the respondent its right to be heard. *Third*, whereas the employees who were claiming salaries in **EXECTUION NO 25 OF 2019** were 25, those in this application are 17. In other words, whereas the argument of the Labor Officer is that the order he wants this court to enforce is that which was passed by the Deputy Registrar, but that of the Deputy Registrar related to 25 people and now the Labour Officer wants to use the order in respect of 25 people for 17. These are some of the reasons why the order of

the Deputy Registrar cannot be deemed to be a decree or order under Rule 48(4) of the Court Rules.

As for the second issue, the Labour Officer conceded that there is no compliance order in place and that therefore he sent none to the employer in terms of the law.

In this case the labour officer is supposed to be acting under the powers conferred upon him by sub section (1) and exercisable under sub section (6) both of section 46 of the Labour Institutions Act. For ease of getting this point across those pieces of legislation provide as follows;

***"46(1) A labour officer who has reasonable grounds to believe that an employer has not complied with a provision of the labour laws, he may issue a compliance order in the prescribed form.***

***(6) the Labour Commissioner may apply to the Labour Court to enforce the compliance order if the employer has not complied with the order and has not objected to the order in terms of section 47(1)."***

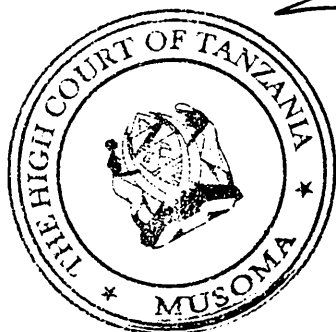
The above quoted provisions set four prerequisites for the Court to enforce a Compliance Order from the Labour Commissioner or the labour officer. **First**, the labour officer must have reasonable grounds that some labor laws have been breached. This condition presupposes that there is a complaint in writing by an employee or employees complaining to the labour officer. I did not see anything like a complaint by any worker to the labour officer for him to properly back his belief. **Second**, if the first prerequisite is in place then the labor officer may issue a compliance order to the

employer. In this case, the labor officer submitted that he did not issue one because according to him, he had an order from the Deputy Registrar of this Court, which aspect we covered already, that that was not a compliance order in eyes of the law, that was the order of the Deputy Registrar discharging the application before her, which she successfully did and the workers were paid. **Third**, the employer must have failed to comply with the compliance order. In this case this is impossible because no compliance order was issued in the first place and **fourthly**, the employer must in addition to failure to honor the compliance order but also he must have failed to present a valid objection. In this case he would not have objected because no compliance order was sent to him.

All these pre requisites and most certainly the second, the third and the forth are missing, which means that this application was filed prematurely and the same is incompetent. It cannot legally be acted upon by the High Court.

Based on the above discussion, this application for execution is struck out.

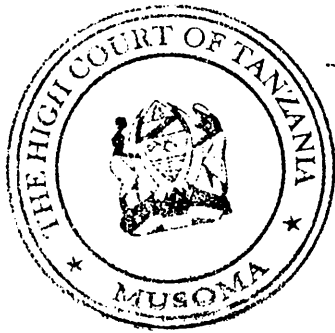
DATED at MUSOMA this 15<sup>th</sup> May 2020



Z. N. Galeba  
**JUDGE**  
**15.05.2020**

**Court;** This ruling has been delivered today on 15<sup>th</sup> May 2020 in the absence of parties but with leave not to enter appearance in chambers following the corona virus outbreak globally and the medical advice to maintain social distance between individuals.

**Order;** Sufficient copies of this ruling be deposited at the Judgment Collection Desk for parties to collect their copies free of charge.



Z. N. Galeba  
**JUDGE**  
**15.05.2020**