

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR-ES-SALAAM**

**(CORAM: MUGASHA, J.A., KITUSI, J.A., And RUMANYIKA, J.A.)**

**CIVIL APPEAL NO. 259 OF 2019**

**LAEMTHONG RICE CO. LTD ..... APPELLANT  
VERSUS**

**PRINCIPAL SECRETARY  
MINISTRY OF FINANCE ZANZIBAR ..... RESPONDENT**

**[Appeal from the Judgment and decree of the High Court of  
Zanzibar at Vuga]**

**(Rabia H. Mohammed, J.)**

**dated the 21<sup>st</sup> day of November, 2018**

**in**

**Misc. Civil Application No. 50 of 2017**

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**JUDGMENT OF THE COURT**

1<sup>st</sup> & 9<sup>th</sup> November, 2022

**KITUSI, J.A.:**

This matter does not speak very well of timely justice, although at the bottom of it the two essential facts are undisputed. These are that; on 23 July 1985, 37 years ago, at the request of the Government of Zanzibar, the appellant supplied it with 39,900 tonnes of rice worth USD 12,935,685, with compounded interest of 25% per annum. And also that no full payment for the rice has ever been made by the respondent in fulfilment of its contractual obligation. The reason the matter has stood pending in Court for all this long is for determination of the amount that

should be paid by the respondent and how execution should be carried out.

However, on 18 December, 2000 the Court pronounced itself on that issue in **Laemthong Rice Co. Ltd v. Principal Secretary Ministry of Finance** [2002] T.L.R 389. Even after the Court's clear position as we shall later refer to, execution of the decree proved to be a nightmare and the issue of the amount to be paid was resurrected. Decisions on that have been made by the Registrar and by a Judge of High Court of Zanzibar. This appeal seeks to challenge those decisions.

Mr. Juma Nassoro, learned advocate appeared before us in the present appeal on behalf of the appellant, whereas, the respondent enjoyed services of Mr. Ali Ali Hassan, learned Principal State Attorney and Ms. Salome Rama, learned Senior State Attorney. Mr. Nassoro addressed us on how and the reason for coming back in this Court while we had already dealt with the matter previously as shown.

Skipping other details, and we agree with the learned counsel on that approach, Mr. Nassoro informed us that earlier, the decree holder (appellant) had intended to execute the decree by attachment and sale of properties belonging to the respondent but that was frustrated by

enactment of the Government Proceedings Act No. 3 of 2010 that barred such execution.

Under the new law, it became necessary for the Registrar of the High Court of Zanzibar to issue a certificate for the decretal amount and that, according to Mr. Nassoro, is where the problem began.

Mr. Nassoro submitted that the decretal amount ought to be USD 69,044,651.24 but the Registrar issued a certificate for the amount of USD 5,700,000 purporting it to be the amount Mkusa, J. had ordered in a previous ruling. The learned counsel argued that neither Mkusa, J. nor the parties could vary the decree. The appellant challenged the Registrar's ruling certifying US 5,700,000, by way of reference to the High Court but Mohamed, J. dismissed the reference. This appeal is against the decision of the High Court in Miscellaneous Civil Application No. 50 of 2017 dismissing the reference.

Counsel mainly argued one ground of appeal, demonstrating in the process, that the matter having reached the Court of Appeal, it was an error for the High Court to decline to fault the Registrar's certification of USD 5,700,000 instead of USD 69,044.651.24. He prayed that we should quash the decision of the Registrar and set aside the resultant order and

also quash the ruling of the High Court dismissing the application for reference.

Mr. Nassoro referred us to the case of **Victoria Real Estate Development Limited v. Tanzania Investment Bank & 3 Others**, Criminal Revision No. 175 of 2015 (unreported) to argue that parties may not vary a Court decree by a settlement as such powers are only enjoyed before the Court makes its decision.

We need not be overly emphatic on the above settled principle. After all, Mr. Hassan for the respondent just turned the other cheek and submitted that as far as the respondent is concerned, the decretal sum is USD 69,044,651.24. Therefore, from the concurrent arguments of Messrs Nassoro and Hassan for the appellant and respondent respectively, the ruling by the Registrar certifying USD 5,700,000 was wrong whatever arguments that had been put forward. The Court's finding on this point in its earlier decision referred to above was very clear. The relevant part thereof runs thus:-

*"The rice was duly delivered in three shipments between 1986 and 1988 and there was part payment of the agreed price. **The balance and the accumulated interest amounted to USD 69, 044, 651.24 as of January 1997. Efforts***

*to secure settlement of the debt proved fruitless although the respondent did not deny the debt, but actually acknowledged it on 15 July, 1996. The appellant therefore instituted these proceedings in the High Court claiming the said sum of USD 69, 044, 651.24 together with interest thereon at 25% p.a. from January 1997 until full payment. The respondent, though duly represented by the Attorney General's Chambers in Zanzibar, failed to file any defence due to his lack of co-operation with the Chambers. This led to the Chambers withdrawing in frustration and to an ex-parte judgment being entered on 16 May upon evidence of Mr. Patel". (the underlining is ours).*

The above has remained to be the position. The learned Registrar had no powers to alter the ex- parte judgment and decree of the High Court, nor the previous order of this Court in this case. Similarly, in dismissing the application for reference, the High Court abdicated its duty to correct the Registrar's manifest error. What was stated by the Court in **Victoria Real Estate Development Limited** (supra), on the duty of the parties and even the courts to respect court orders, was recently restated in **Karori Chogoro v. Waitihache Merengo**, Civil Appeal No. 164 of 2018 (unreported).

For those reasons, we allow this appeal. Consequently, we quash the Registrar's ruling as well as the ruling of the High Court in Miscellaneous Civil Application No. 50 of 2017. We set aside the certification of USD 5,700,000 and stand by our judgment dated 18 December, 2000.

Order with costs.

**DATED at DAR ES SALAAM** this 8<sup>th</sup> day of November, 2022.


S. E. A. MUGASHA  
**JUSTICE OF APPEAL**

I. P. KITUSI  
**JUSTICE OF APPEAL**

S. M. RUMANYIKA  
**JUSTICE OF APPEAL**

The Judgment delivered this 9<sup>th</sup> November, 2022 in the presence of Mr. Said Salim Said, learned State Attorney for the Respondent also holding brief for Mr. Juma Nassoro, learned counsel for the Appellant, is hereby certified as a true copy of the original.



  
D. R. LYIMO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**