

IN THE HIGH COURT OF TANZANIA
AT DODOMA

CIVIL REVISION NO. 2 OF 2010

SUMRY HIGH CLASSAPPLICANT

Versus

SADALLAH IBRAHIM SADALLAH RESPONDENT

REVISION ORDER

HON. MADAM, SHANGALI, J.

Sometime in May, 2007 the plaintiff/Decree Holder, **SADALLAH, IBRAHIM SADALLAH** had filed a suit before Dodoma Resident Magistrate Court against **SUMRY HIGH CLASS** defendant/Judgement Debtor claiming for refund of TShs.27,200/= special damages of TShs.103,200/= and general damages of TShs.15,000,000/= for inflating bus fare contrary to the rate fixed and approved by the Surface and Marine Transport Regulatory Authority commonly known by its acronym SUMATRA. This was Civil Case No. 21 of 2009.

The defendant/Judgement Debtor failed to appear before the trial court and on 21st January, 2010 the trial court granted the plaintiff's application to proceed with his case ex-parte. Exparte hearing was accordingly conducted from 15th

February, 2010 and on 6th May, 2010, the judgement was pronounced in favour of the plaintiff/Decree Holder as prayed.

It appears that on 25th August, 2010, the advocate for the defendant/Judgement Debtor filed an application under certificate of urgency praying for interalia Exparte temporary injunction to refrain the respondent or his agent from proceeding with execution pending the determination of his main application interparties for leave to file his application to set aside the exparte judgement out of the prescribed time limit.

On 2nd December, 2010, the date fixed for the hearing of the application, the trial court (Hon. Mbilu R.M.) ordered the execution of decree to proceed pending the determination of the application. Then, she adjourned the application to be heard on 24th January, 2011.

It is also on the record, that on 13th August, 2010 the plaintiff/Decree Holder filed his application for execution of decree in which he was claiming TShs.16,185,912/=. That is according to the Exchequer Receipt No. 40695818 for fees for filing application for execution Misc. Application No. 31 of 2010 dated 13th August, 2010.

Then on 22nd November, 2010 the plaintiff/Decree Holder filed another application for execution of decree with TShs.20,243,548/= when the application for stay of execution was in progress and pending before the trial court. This is evident from exchequer receipt No. 41565661 fees for Misc. Civil Application No. 31 of 2010.

On 4th November, 2010 the trial court (Mr. Mutaki R.M. I/C) allowed the execution to proceed forthwith by attachment of property of the defendant/Judgement Debtor.

On 7th December, 2010, I received a complaints letter from Mr. Salim Abubakari, learned advocate for the Defendant/Judgement Debtor Ref.No.BLC/CIV.CASE No. 21/09/1 dated 3rd December, 2010. The complaints were based on the conducts of the Civil Case No. 21 of 2009 specifically on the execution process. I immediately called the relevant case file for inspection and discovered what I have stated above.

In his letter of complaints the learned advocate have complained that immediately after receiving the notice to show cause as to why execution should not be carried out, the defendant/Judgement Debtor instructed them to file necessary application to halt the exercise. In the result on 25th August, 2010 they filed the above said chamber

application praying for orders to set aside the exparte judgement and stay of execution of the exparte decree. Mr. Abubakari complained that their application never received a normal welcome because the Resident Magistrate In-Charge hesitated to admit it and that when the same was placed before the trial magistrate they were told not to waste their time. Mr. Abubabakari complained further that, after a prolonged discussion, the Resident Magistrate In-Charge decided to separate the applications and ordered the application for execution to be heard by himself while the application for stay of execution and setting aside the exparte decree to be heard by the trial Resident Magistrate.

In his letter, the advocate went on to complain that, their application before the trial Resident Magistrate (Hon. Mbilu) could not be heard for a long time because of her several absence. As a result the Resident Magistrate In-Charge proceeded with granting the order of execution.

Mr. Abubakari complained that on the date of hearing of the main application i.e. 2nd December, 2010 the trial Resident Magistrate ordered the execution to proceed and on the same date they were served by the plaintiff/Decree Holder with a warrant of attachment from Kondoa Auction Mart and Court Brokers to attach the applicants bus with Reg.T138 BDH in execution of a Decree worth

TShs.22,267,902/= . The learned advocate concluded that justice must be seen to be done but he was convinced that the way the case was conducted left much to be desired. He request for this court's intervention for the sake of justice.

I agree with complaints raised by Mr. Abubakari. Much of his complaints do not require evidence for their obvious on the trial courts record of proceedings. Having filed his application under certificate of urgency praying for stay of execution and leave to file his application to set aside the exparte judgement out of time, the trial court should have equally attended the application with urgency and pronounce decision. Instead the trial court capitalized an execution proceedings and eventually both magistrates ordered for execution before hearing the defendant/Judgement Debtor's application without giving any reason or viable explanation. I could not understand why the Resident Magistrate in-Charge decided to proceed with the hearing of the application for execution knowing that his learned sister was dealing with an application for stay of execution and setting aside the exparte judgement. It is neither clear as to why on 13th August, 2010 the plaintiff/Decree Holder filed his application for execution of a decree amounting to 16,185,922/= and later unceremoniously on 22nd November, 2010 filed another decree showing 20,243,548/= in the same file. Nonetheless, that application for execution and attachment was granted on

4th November, 2010 although the decree of TShs.20,243,548/= was filed on 22nd November 2010. Mr. Abubakari complained that he was served with a decree worth TShs.22,267,902/= I could not trace a copy of such a decree in the trial courts record of proceedings.

Be it as it may, it is a general principle of law that where the determination of the right or obligations of person is involved, the decision maker must give reasons for his decision – See **Tanzania Air Services Ltd vs. Minister for Labour, Attorney General and the Commission for Labour (1996) TLR 217**. If a judge or magistrate want his decision to command public confidence he must support them with reasons. In fact reasons indicate that the decision maker has brought his mind to bear on the subject matter in question. It shows that his decisions are not arbitrary or partisan.

The defendant/Judgement debtor should have been told why his application was not heard; why the trial court was not paying attention to his advocates endeavours; why the trial court decided to speed up execution process leaving other important application on the same matter pending and why the decision were in favour of the plaintiff/Decree Holder inspite of differences in the filed amount on the Decrees. It is not wrong for the courts to speed up the trials, but that speed

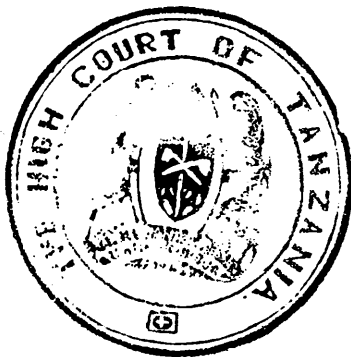
must consider the rights of both parties and there must be good reasons for that speed. Reasons in decision making are strong proof that the conduct of the case and decision thereof was made fairly based on the facts and circumstances of the case and not motivated by personal factors. Parties to the case are entitled to know the reasons of the decision against them and even those favouring them.

For the above reasons justice was not seen to be done and infact it was not done at all. The defendant/Judgement Debtors advocate was not given his deserving right to be heard. No reasons for the decisions made by the trial Resident Magistrates were discernible on record. Both decisions from the two trial Resident Magistrates made after the exparte judgement were seriously wanting in judicial objectivity hence unacceptable.

In the exercise of my revisional powers under section 44 (1) (b) of the Magistrate Court's Act, Cap II R.E. 2002, I hereby declare all decisions made by the two trial Resident Magistrates after the Exparte Judgement null and void. To be specific the said decisions include order of execution dated 2/02/2010 in Civil Case No. 21/2009 and Execution Orders in the Misc. Civil Application No. 31 of 2010. The trial court is now directed to hear and determine the application filed by the Defendant/Judgement Debtor for stay of execution and

leave to file application to set aside the exparte judgement out of time and any other application (as may be filed by any party) in accordance to the principles of natural justice.

In the interest of justice this matter should now be attended and conducted by another Resident Magistrate, other than the previous two. It is so ordered.




M.S. SHANGALI

JUDGE

16/12/2010

Copies of this ruling to be issued to both parties and Kondo Auction Mart and Court Brokers immediately.


M.S. SHANGALI

JUDGE

16/12/2010