

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY)**

**AT ARUSHA**

**MISC- CIVIL APPLICATION NO. 93 OF 2017**

*(Originating from Misc. Civil Application No. 77 of 2013 High Court, Original from Bill of Costs No. 29 of 2001)*

**ESTOMIH WILLIAM.....APPLICANT**

**VERSUS**

**1. ALIBAKI SALIM.....1<sup>ST</sup> RESPONDENT**

**2. ALIFAYO OLE KIAMBWA.....2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 19/04/2018*

*Date of Ruling: 01/06/2018*

**BEFORE: S.C. MOSHI, JUDGE**

The application was brought by way of Chamber Summons whereby the Applicant seeks for the following orders:

- a) An order that the Respondent be committed to prison as Civil Prisoners after deliberately or ignored or failed or neglected to pay the decretal amount in Civil Case No. 10 of 1995 of Msitu wa Tembo Primary Court, Arusha District Court Civil Appeal No. 12 of 1997, High Court PC Civil Appeal No. 43 of 1998, Bill of Costs No. 20 of 2001(HC), Bill of Costs No. 9 of 2003, Court of Appeal No. 6/2001, H/C Misc No. 50/2002 and H/C Misc Civil Application No. 77 of 2001.
- b) Costs abide the event in the main Application.

The Application was supported by Applicant's affidavit.

Both parties appeared in person. The Respondent filed a Counter Affidavit together with a Notice of Preliminary Objection on point of law. I ordered the parties to argue the Application and the Preliminary Objection on points of Law together and the same should be disposed off by way of written submissions.

The parties filed their submissions. Respondent's submission was prepared by his Advocate Mr. S.J. Lawena.

I have considered the submissions. I have decided to answer the points of law that were raised. I, at the outset find that the second (b) and third (c) points of law are meritorious.

Point (b) reads thus:

***"That so long as the Applicant prays this Honourable Court to execute the decision of Msitu wa Tembo Primary Court Civil Case No. 10 of 1995, then the application is incompetent for invoking wrong provisions of the law"***

I outright agree with Mr. Lawena that among the grounds for applying for the prayer to commit the respondent to prison is the fact that the respondent has failed to pay decretal amount in Civil Case No. 10 of 1995 of Msitu wa Tembo Primary Court. However, the High Court is not the executing Court of Primary Court's decrees unless the same has been transferred to this Court in accordance with the procedure. Otherwise the

applicant may apply for these prayers for the cases whose orders were being executed by the High Court.

In respect of point (c); if it is true that the Applicant's affidavit does not support the Chamber Summons. As shown earlier in the Chamber Summons the applicant refers to the Primary Court Case, District Court Appeal, High Court Bill of Costs and High Court Application. However in the affidavit he only refers to Bill of Costs No. 29/2001 and Misc. Civil Application No. 77 of 2013.

As regards to the Affidavit, that is point (a); the respondent argued that the jurat of the affidavit is not signed. However upon scrutinizing the document I found that the jurat of the affidavit that was filed in Court was properly signed.

That said, I uphold the 2<sup>nd</sup> and 3<sup>rd</sup> points of law.

Consequently, I strike out the application with costs.



  
**S.C. MOSHI**  
**JUDGE**  
**01/06/2018**