

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM  
CIVIL REFERENCE NO. 13 OF 2020**

**K- GROUP (T) LIMITED..... APPLICANT**

**VERSUS**

**DIAMOND MOTORS LIMITED.....RESPONDENT**

(From the decision of Deputy Registrar of this court in execution)

**(Kisongo- Esq, Deputy Registrar)**

Dated 5<sup>th</sup> August 2020

in

Execution Case No. 20 of 2020

-----  
-----

**RULING**

13<sup>th</sup> April & 12<sup>th</sup> July 2021

**Rwizile, J**

By chamber application supported by an affidavit of Yona Lucian Habiye, this application was filed. It is filed under section 77, Order XLI rule 1, Order XLIII rule 2 and section 95 of the Civil Procedure Code, [Cap 33 R.E 2019]. The applicant is praying for;

- 1. That, this court be pleased to entertain the reasonable doubt arising in the Execution Case No. 20 of 2020 (before the Deputy Registrar Hon Kisongo, C.M) and make an order inter alia that, the execution*

*of the decree in execution case no. 20 of 2020 be executed under compound interest and not simple interest.*

*2. Any order and reliefs the Honourable Court will deem just and fit to grant.*

In the affidavit sworn by Yona Lucian Habiye, the applicant averred that she filed an execution No. 20 of 2020 to execute the decree awarded in Civil Case No.66 of 2003. She further averred that she claimed the principal sum and interest calculation be computed under compound interest.

She averred further that, during the hearing of the said application, the registrar decided that, granting of compound interest was not amongst the powers vested to her in executing the said decree.

At the hearing, parties were represented, for the applicant was Ms Mariam Majamba learned advocate, while respondent enjoyed the services of Mr. Muganyizi learned advocate.

It was the applicant's submission in support of the application that, the computation of the interest in compound interest was inevitable, considering the fact that, she said, the subject matter in their case was a commercial transaction. She asserted that, one of the things which the court is bound to award compound interest, is the nature of business the parties transacted, the trade and custom of business, the stipulation in the agreement between the parties. To support her argument, she cited the case of, **National Oil vs Standard Chartered Bank (T) Ltd**, Commercial Case No. 120 of 2005.

It was submitted further that, the outstanding liability payable by the applicant to the treasury is 7,000,000 Japanese Yen which has to be paid under the current value of the Bank of Tanzania. The learned advocate stated that, the Japanese Yen exchange rate in 2001 was 7.5% while the current exchange rate is 21.5%, she then said, if the interest is to be computed in simple interest and not compound, the repayment of 7,000,000 Yen in current value, according to her will not be met. She stated that, the respondent's liability of paying 60% for the outstanding sum, should be calculated in compound interest. She relies on the case of **Veleo (K) Ltd vs Barclays Bank of Kenya** (2013) KLR

The applicant asserted further that; compound interest is awarded when the court exercises its equitable jurisdiction. She argued, since she was denied the opportunity to invest in her monies by the 1<sup>st</sup> defendant's actions. She said, the court can award compound interest due to the penalties charged under credit facility agreement the party transacted. She then said, the reason to invoke compound interest in this matter is the fact that, the interest rate applicable under the credit facility agreement was compound interest. She cited section 29 of CPC and the cases of **Sempra Metals Ltd vs Inland Revenue Commissioners** [2007] UKHL 34 and **Bank of Nova Scotia vs Dunphy Leasing Enterprises Ltd** (1991) 83 Alta. LR (2d) 289; [1992] 1WWR 557 CA which cited the case of **Park Projects Ltd vs Halifax City** (1981) 48 NSR (2d).

Moreover, it was argued that, since judgement debtor utilized and enjoyed the investment of the monies since year 2000, in which the decree holder suffered great loss, and she said, since time has affected the value of money while the grant as shillings today is worth less than the same in year 2000.

It was her assertion that the court may consider calculation be based on compound interest. She then prayed for this court to allow the execution of the decree in execution No. 20 of 2020 be executed under compound interest with costs.

Oposing the application, Dr. Onesmo Michael Kyauke of Locus Attorneys for the respondent adopted the counter affidavit and submitted that, the compound interest was not pleaded at the trial court nor the Court of Appeal by the applicant. The learned advocate stated that, the issue of compound interest are matters of evidence which has to be determined by the court.

He said, allowing it now is like modifying the judgement passed by the Court of Appeal. He added that, the applicant cannot submit on the issue of foreign exchange rate payable under agreement which respondent was not party to it. He relied in the case of **Baylem Limited vs Country Government off Nairobi** (2021) eKLR.

It was submitted that, the case of **National Oil** (supra) is distinguishable from this case at hand. According to him, in that case the appeal to the court of appeal was dismissed unlike in this case at hand where the Court of Appeal ordered for payment of interest at ration of 18%. He added that, if the same has to be computed in compound interest, the court of appeal could have stated so in its judgement.

The learned advocate argued further that, there was no sufficient reasons given by the applicant to warrant compound interest. He said even if the court can award compound interest on equity as per the case of **National Oil** (supra), his opinion was, each case has to be decided on its own circumstances.

He stated further that, the court can award compound interest if the judgement debtor has deliberately delayed the execution process or where the parties had earlier agreed on compound interest. Otherwise, he said compound interest should be pleaded in pleadings. According to him, there were no evidence by the applicant to prove that respondent deliberately prevented the execution nor has benefited from the decree holder's money. It was his prayer that this application be dismissed with costs.

When re-joining, the applicant reiterates what she submitted in her submission in chief. She stated that, the nature of the business transacted by the parties, the current outstanding loan of 7,000,000 Yen which has to be paid in the current value of BOT, should be considered by the court when awarding interest be done in compounding basis. She said, it is undisputed that the interest applicable under the credit loan facility was compound interest. She therefore said, the same warranting for this court to award compound interest.

The learned advocate argued that, even if the applicant did not plead for compound interest, still, this court has the power to award compound interest to enable the applicant to be fully compensated when the award is finally paid. To support her argument the learned counsel cited the cases of **Veleo (K) Ltd** (supra) and **Bank of America Canada vs Mutual Trust Co.** (2002) 2 SCR 601. She then said, the circumstances of this case warrant for the interest to be calculated on the basis of compound interest.

Having considered the submission of the parties the question to be asked is whether the deputy registrar can order for compound interest during execution of a decree.

To begin with, it is a settled rule of practice that when unreported decision of this court, the Court of Appeal or any other court is cited for reference. The party citing has to supply the copy of the same to the court for its reference. In this case, the applicant has cited a litany of authorities from different jurisdiction. The same, despite not being supplied to this court, they did not even show the level and jurisdiction of the court that made them. The respondent's counsel as well cited I think cases from Kenya but did not supply the same. I will not therefore, consider cases cited but not supplied.

Going to the merits of the case, it is settled that the Registrar or Deputy Registrar of the High Court is vested with powers to execute decrees of this court. The same is provided for under Order XXI and Order XLIII rule 1 (g) (h) of the Civil Procedure Code.

In her ruling when asked to award compounded interest, the Deputy Registrar rejected the request on ground that she has no such powers. She did so under section 38 of CPC, which requires the executing court to determine all issues arising from execution. It states as follows;

*38.-(1) All questions arising between the parties to the suit in which the decree was passed, or their representative, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.*

Discerning from the provision, it is the duty of the court executing the decree, in this case the Deputy Registrar to interpret the terms of the judgement as passed by the court. By the history of the case, the decree to be executed was of the final judgement. It was made by the Court of Appeal in Civil Appeal No. 50 of 2019 as attached to the application. While the high Court awarded under item 4, 5 and 6 respectively that 24% per annum, 24% per month and interest at the court rate. This is per the decree in Civil Case No. 66 of 2003, the Court of Appeal conversely when partly allowing the appeal it held as follows; under item (ii) and (iii) of the decree in appeal that interest be at 18% from the date the date it fell due to the date of judgement and then rejected the court rate interest. Since the court was categorical that the interest was specifically stated then it was not the duty of the executing court to deal with compounded interest which was not pleaded and or granted. Doing so, in my view the Deputy Registrar could be making her own judgement, instead of executing the same. From the foregoing, I agree with Dr. Onesmo that the decision of the Deputy Registrar was right. This application therefore has no merit. It is dismissed with costs.

**AK. Rwizile**  
**Judge**  
**12.07. 2021**



 Recoverable Signature

X   
\_\_\_\_\_

Signed by: A.K.RWIZILE