

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

**MISC. CIVIL APPLICATION NO. 88 OF 2020**

*(Originating from Land case 10/2014)*

**LAZARO M. KIVUYO.....APPLICANT**  
**VERSUS**  
**HAMADI OMARY MWEREKWA .....RESPONDENT**

**RULING**

**16/6/2021 & 27/8/2021**

**GWAE, J**

In this court, the applicant, **Lazaro M. Kivuyo** was plaintiff suing the respondent, **Hamadi Omary Mwerekwa** vide Land Case No. 10 of 2014. The dispute was ultimately determined in favour of the applicant. The respondent was ordered to give vacant possession and pay the applicant Tshs. 5,000,000/=being general damages.

As always, the case, the applicant forcibly evicted the respondent from the suit land measuring 108 x 91 ft however the applicant was not able to promptly enforce Tshs.5,000,000/= ordered by the court (**Moshi, J**). Hence, this application for an order directing the respondent to appear and show cause why he should not be committed to prison as a civil prisoner till satisfaction of the decretal amount for failure to satisfy the court decree dated 13<sup>th</sup> March 2015.

Despite several endeavors to have the respondent served, the respondent never appeared in court as a result, this application proceeded ex parte. Through the applicant's supplementary affidavit, the applicant exhibited his strength or ability to pay for the costs of maintaining the respondent, judgment debtor while serving a civil prisoner.

As this court has been moved by provisions of Order XXI Rule 35 (1) and (2) of the Civil Procedure Code, Cap 33 Revised Edition, 2019, perhaps it is apposite to have them reproduced herein under

35.-(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention as a civil prisoner of a judgment debtor who is liable to be arrested in pursuance of the application, the court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the court on a day to be specified in the notice and show cause why he should not be committed to prison.

(2) Where appearance is not made in obedience to the notice, the court shall, if the decree-holder so requires, issue a warrant of arrest of the judgment debtor.

As gleaned by the quoted provisions of the law above, it is clear that, whenever the requisite appearance has not been made possible for reason best known by a judgment debtor, the court is justified, upon application by the decree holder, to issue a warrant of arrest sought against judgment debtor. It is

therefore, in the light of the above statutory provision followed by a refusal or negligence to enter appearance in court on the part of the respondent, this court has therefore no reason to decline granting the applicant's prayers.

Having observed that the respondent defaulted appearance before this court and therefore failing to show Cause as to why he should not be committed to prison for his failure to fully satisfy the decree, I therefore make the following orders;

1. That, a warrant of arrest of the respondent named herein is issued
2. That, Regional Police Commander of any Region within the United Republic of Tanzania is directed to arrest the said Hamadi Omary Mwerekwa and bring him to the court as soon as practicable unless the decretal sum (Tshs.5, 000, 000/=) together with interests thereof and costs is sooner paid
3. That, the warrant of arrest shall remain valid until and unless the respondent is arrested and or decretal amount is evidently paid in favour of the applicant

It is so ordered



  
M. R. GWAE

JUDGE

27/08/2021