

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL REVISION NO. 4 OF 2021

(Originating from the District Court of Bagamoyo at Bagamoyo in Execution No. 06 of 2020)

MOSHI ALFANI APPLICANT

Versus

SAID KIPAGAME KASWELA RESPONDENT

RULING

MRUMA, J.

This Court may, in terms of section 44(1) (b) [Cap. 11 R.E 2019] of the Magistrate Court Act, in any proceedings of a civil nature determined in a district court or a court of a resident magistrate on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decisions or orders therein as it sees fit.

This application was brought by way of Chamber Summons made under section 44 (1) (b) of the Magistrate Court Act [Cap. 11 R.E 2019] seeking for the following orders:

1. That, this Honourable Court be pleased to call for records of Execution No. 6 of 2020 for Revision of the Ruling dated 11th January, 2021.

2. Cost for this Application be improvised.
3. Any relief that this court may deem just and fit to grant.

The Application is supported by an affidavit affirmed by the Applicant on 28th January, 2021 in which he substantially explained the grounds set above. That, the Trial Court in the Civil Case No. 10 of 2015 was satisfied with evidence adduced in a claim of malicious prosecution laid against the Respondent and ordered the Applicant to be compensated to the tune of Tsh. 30,000,000/=.

The Applicant herein made an Application to execute that decree against the Respondent in Execution No. 06 of 2015. The Applicant prayed for immediately payment of Tsh. 30,000,000/= or in the alternative for the Respondent to be sent to prison as civil prisoner in default thereof. The Court denied the Application on the ground that sending the Respondent to prison will amount to punishing an obedient person who is poor. Dissatisfied with the decision the Applicant resorted to this Court for a revision.

On hearing of this Application parties appeared in person and requested for a matter to be heard in writings thus revision was heard by way of Written Submission.

In his submissions, the Applicant argued that the grounds relied upon by the presiding magistrate were baseless and should not hinder the applicant from enjoying the fruits of his decree and that it is the requirement of the law and justice that the decree should be executed immediately and promptly without any obstacle.

In his submissions in reply, the Respondent contended that as this matter originates from a malicious prosecution case in which judgment was entered in favour of the Applicant without any proof as to how the Court arrived into that amount, it was correct for the District court to refuse to allow it to be executed. He said that because he was ill and had given evidence to the effect that she was economically incapacitated with no any property to attach therefore it was correct for the Court to disallow the Application as per Order XXI Rule 39(1) of the Civil Procedure Code. He prayed for this Court to dismiss this Application for want of merit.

Brief background of the case is that; parties had agreement in which the Applicant had to quit his former occupation to be engaged by the Respondent in his farm with a consideration of T.shs 30,000,000/= upon selling the said farm. After the sale the Respondent failed to honour his promise as a result of which the Applicant withheld his land ownership documents. The respondent resorted into institution of Criminal Case No. 208/2013 at Mwambao Primary Court in which the Applicant was held Criminal Liable and were ordered to return the documents.

Dissatisfied with that decision he appealed to the District Court and judgment were entered in his favour on tha ground that the Primary Court had no jurisdiction to entertain the case. This prompted the Applicant to file a malicious prosecution claim against the Respondent in the Civil Case No. 10/2015 which was determined in his favour and were awarded 30,000,000/= as compensation. As the Respondent could not pay as ordered, the Applicant filed Execution No. 06/2015 for his arrest and detention in which the Court denied the Application for the reasons that,

committing the Respondent in prison as means of satisfying the decree, he who has no income, no property to attach, it may be like punishing obedient person who is poor.

I have carefully considered parties submission and the records of the Lower Courts. Rule 39 of order XXI of the CPC provides that:

"Where a judgment debtor appears before the Court in obedience to a notice issued under rule 35 or is brought before the Court after being quested in execution of a decree for payment of money and it appears to the Court that the Judgment debtor is unable from poverty or other sufficient cause to pay the amount ----- the court may upon such terms if any as it thinks fit, make an order disallowing the application for his arrest and detention or, his release as the case may be.

In its verdict the district court stated that the Respondent pleaded poverty and illness as his reasons for inability to pay the amount but the court was not in a position to understand what exactly was troubling him. That notwithstanding the court proceeded to dismiss the Applicant's application. In my view, as the Court did not know what was troubling the Respondent, it was wrong for it to rule that the Respondent was a person of no means. In terms of the provisions of Rule 39 cited above it must appear to the court that the judgment debtor is poor or has any other sufficient cause which made him unable to pay. Nothing is on record to prove that or that

he had any other sufficient cause which prevented him from paying the decretal sum.

That said, I allow the Application. I quash and set aside all decisions and orders of the District Court. I direct that upon payment of subsistence allowance as required by Rule 38 (2) of the Civil Procedure Code and approved by the Prison Department, (i.e. Bagamoyo Prison), the Judgment debtor shall be detained as a Civil Prison at Bagamoyo prison for initial period not exceeding six (6) months depending on the subsistence allowance paid by the decree holder or unless the debt is sooner paid.

In terms of Rule 38(4) of Order XXI of the Civil Procedure Code the first payment shall be made to the proper officer of the Court who shall immediately thereafter transmit it to the Prison Officer In-charge of Bagamoyo Prison. The subsequent payments shall be made direct to the Prison Officer In-charge.



A handwritten signature in black ink, appearing to read "A. R. Mruma".

A. R. Mruma

JUDGE

27th September, 2021

Dated at Dar es Salaam this 27th day of September, 2021.