

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

APPLICATION FOR REVISION NO 09 OF 2021

*(Arising from Misc. Civil Application No 01 of 2021 of Musoma District Court and
Originating from Civil Case No 277 of 2020 in Musoma urban Primary Court)*

FLORA GERVAS KAIZIRE APPLICANT

VERSUS

DORA JAMA RESPONDENT

RULING

25th April & 29th April, 2022

F. H. MAHIMBALI, J.:

The applicant who is indebted by the respondent has been condemned by the District court of Musoma as Civil prisoner for failure to settle the decreed sum.

She has been aggrieved by that order of Musoma District Court on allegation that as the decretal sum was ordered by the trial primary court, the District court cannot execute it.

I have heard the parties' submission in this respect.

In consideration of the submissions done for and against the application, I am supposed to rule out whether the application is meritorious.

According to paragraph 4 of the fourth schedule of MCA Cap 11 R. E. 2019, the District Court is dully mandated to hear and determine such an application for execution. The same provides:

"A primary court may on the application of the party entitled to the benefit of such order in any Civil proceedings, request a district Court to take steps for the arrest and detention of any person who has failed to comply with the order for the payment of any amount, including compensation or costs, made by such primary court, and upon receiving any such request the district court shall have jurisdiction and powers to order arrest and detention of such order as if an application were made for the arrest and detention in the Civil prison of a judgement debtor in accordance with the provision in the Civil procedure code".

Thus, in law the district court is legally mandated to execute the order of primary court if the decree holder intends to commit the Judgement Debtor if he/she defaults and evades payment thereof. This responds the both legal issues. That the District court can in some circumstances execute the orders of primary court (see paragraph 4 of the Fourth schedule of MCA). Secondly, in that capacity it can commit the judgment debtor of the primary court's decree civil prisoner so defaulted and legally established.

Thus, the application was properly before the court. However, as per trial court's records, such a mode of execution is of last resort. The respondent ought to have established by evidence in a sworn affidavit why she opted the said application. I have not found any in the trial court record.

Moreover, in the consideration of her filed counter affidavit and submission in court during the hearing of the application, the argument that the applicant has no other means to settle the decretal sum is unestablished. There ought to be a concrete proof by affidavit that the applicant has no such means/evaded the said payment. The respondent is advised to deploy such other modes first, including seeing her employer (Court Administrator of Musoma on behalf) for purposes of possible settlement. If still in vain, she is advised to resort to this last mode after establishing by evidence all this endover and comply as per law.

That said the application is partly allowed to the extent stated. The respondent is dully advised.

DATED at MUSOMA this 29th day of April, 2022.



F. H. Mahimbali

JUDGE

Court: Judgment delivered this 29th day of April, 2022 in the presence of the respondent and Mr. Gidion Mugo, RMA, Applicant being absent.



F. H. Mahimbali

Judge

29/04/2022

