

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB REGISTRY)
AT DAR ES SALAAM

EXECUTION NO. 32 OF 2021

(Arising From the Judgment and Decree of This Court in Civil Case No.239 of 1995)

PROFESSOR GABRIEL RUHUMBIKA.....DECREE HOLDER
VERSUS
PENDELTON SECURITY INTERNATIONAL (T) LTD.....1ST JUDGMENT DEBTOR
WILLIAM ALLY KIWANGO.....2ND JUDGMENT DEBTOR.

RULING

Last Order: 12/7/2022

Ruling: 5/8/2022

MASABO, J.:-

The ruling is in respect of an application for execution by which the applicant/deGREE holder, has moved the court to assist in the execution of the judgment and decree of this court in Civil Case No.239 of 1995. The mode by which the execution is sought is by arrest of the 2nd judgment debtor, William Ali Kiwango and his detention as civil prisoner.

Rule 28 of Order XXI of the Civil Procedure Code (Cap 33 RE 2019) provides as follows:-

"Every decree for the payment of money including a decree for the payment of money as the alternative to some other relief may be executed by the detention as a Civil Prisoner of the judgment debtor or by attachment and sale of his property or by both"

The procedure to be followed when the court is moved to assist in execution of a decree by way of arrest and detention of the judgment debtor was exhaustively exemplified in the decision of the Court of Appeal in **The Grand Alliance Limited v Mr. Wilfred Lucas Tarimo & 4 others**, Civil Application No. 187/16 of 2019 whose relevant party is reproduced at lengthy below to drive the point home:

"The right to commit a judgment-debtor as a civil prisoner is provided under sections 42 to 47 and rules 28, 35 to 39 of Order XXI of the Code. Section 42 of the Code enumerates different modes of execution that the decree-holder can choose for executing his decree. However, that right is subject to some conditions and limitations.....

It follows then that the imprisonment of a judgment-debtor in execution cannot be ordered unless the conditions and limitations are satisfied. One of those conditions is that there must be an application for execution of a decree for payment

of money by arrest and detention in prison of a judgment-debtor (See sections 42 and 44 and Order XXI rule 10 of the Code). After receipt of the application, the executing court has discretion to issue a notice to show cause to the person against whom execution is sought, on a date to be specified in the notice, why he should not be committed to prison or to issue a warrant of his arrest (see Order XXI rule 35 (1) of the Code). The purpose of this warrant is to bring the judgment-debtor before the executing court and it is not an automatic order for committal as civil prisoner because the executing court is required to be satisfied with the conditions stated under Order XXI rule 39 (2) of the Code before committing a person to prison. Likewise, where the judgment-debtor defaults appearance on a notice to show cause, the executing court shall, if the decree-holder so requires, issue a warrant of his arrest (see Order XXI rule 35 (2) of the Code).....”

In the present application, the decree holder has applied for execution of a decree of Tshs 400,970,000/= . Upon the application being filed, this court caused a notice to be issued to the 2nd judgment debtor requiring him to show cause why he should not be arrested and detained as civil prisoner. The efforts to serve him turned futile and a substituted service by way of

publication was invoked by publishing the notice in Mwananchi Newspaper and the Daily News of 4th March 2022 but he still defaulted appearance.

Addressing the court on 12th July 2022, Mr. Sauli Santu, counsel for the decree holder prayed that the 2nd judgment debtor be arrested and brought before this court to show cause why he should not be detained as civil prisoner.

Guided by the principle above, I have carefully examined the application to see whether the requirement of Order XXI rule 35 (2) has been met. This rule provides that,

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

As held in **The Grand Alliance Limited V Mr. Wilfred Lucas Tarimo & 4 others** (supra), securing the attendance of the judgment-debtor by issuance for a warrant of arrest can only be invoked if the decree holder so desires and upon the execution court been satisfied that the judgment-debtor was dully served with the notice to show cause and there was

disobedience to the notice. Based on what I have narrated above with regard to service, I am fortified that the judgment debtor was dully served. Considering also that the applicant has expressed his desire that the procurement of the attendance of the judgment-debtor proceed by issuance of a warrant of arrest, I instantly grant the prayer and order that, unless the decretal sum is paid within 30 days, the judgment debtor should be arrested and brought to this court to show cause why he should not be detained as civil prisoner.

Order accordingly,

DATED at DAR **ES SALAAM** this 5th day of September, 2022

X



Signed by: J.L.MASABO

J.L. MASABO

JUDGE

