

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)**

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 639 OF 2021

(Arising from Civil Case No. 103 of 2016.)

ARYSTA LIFESCIENCE LIMITED APPLICANT

VERSUS

I.S.M & METAL LIMITED JUDGMENT DEBTOR

RULING

18th August, & 15th September, 2022

ISMAIL, J.

The applicant instituted proceedings against the judgment debtor for recovery of outstanding sums allegedly due from the judgment debtor. The proceedings culminated into a money decree that awarded the applicant, the decree holder, the principal sum aggregating TZS. 40,128,800/-. This sum has accrued some interest.

In the process of realizing the fruits of the decree, the applicant has filed the instant application, and the prayer sought is to have a certain Mr. Dipson Balyagati, the judgment debtor's director, arrested and detained as a civil prisoner. The reason given in the supporting affidavit is that the said Mr. Balyagati has alienated the judgment debtor's assets and the latter has

stopped her business operations. He also served as the judgment debtor's witness in the trial proceedings that bred the decree sought to be executed.

It should be noted that efforts to compel the judgment debtor to appear in court and defend herself against the allegation fell through, apparently because her place of abode has since shifted to an unknown location. It was in view thereof, that the Court acceded to the prayer for service of the summons by way of substituted service through publication in Mwananchi Newspaper. The publication did not bring the desired effect as the judgment debtor defied the order. The Court ordered that the application be heard *ex-parte*.

At the hearing of the application the applicant was represented by Mr. George Mlay, learned counsel. He submitted that the investigation revealed that most of the judgment debtor's assets have since been sold out while ownership of other assets changed hands as the case was pending. Mr. Mlay argued that a search carried out at the Business Registration and Licensing Authority (BRELA) showed that Mr. Balyagati is the majority shareholder of the judgment debtor.

Mr. Mlay submitted that he suspected that the judgment debtor is avoiding liability and that the company has stopped business. He contended that the only way to realize the decretal sum is only through arrest and

detention of Dipson Balyagati. He prayed that the order sought in the application be granted.

This application has been preferred under Order XX rule 35 (1) and 36 of the Civil Procedure Code, Cap. 33 R.E. 2019 (CPC) both of which allow execution of a money decree through arrest and detention of a judgment debtor or calling upon him to appear before a court and show cause as to why he should not be committed to prison.

For ease of reference, the said provisions are quoted as follows:

Rule 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."

Rule 36

"Every warrant for the arrest of a judgment debtor shall direct the officer entrusted with its execution to bring him before the court with all convenient speed, unless the amount which he has been ordered to pay, together with

the interest thereon and the costs (if any) to which he is liable, be sooner paid."

I have gone through the supporting affidavit, and reasons adduced by the applicant to justify the prayer for arrest and detention of the judgment debtor's director and a majority shareholder. Whilst I appreciate reasons for the applicant's choice of going personal against the director of the judgment debtor, and that this is part of her effort to realize the fruits of the decree, I take the view that such action must be gradual. By that I mean that the person cited for arrest and detention must first have his day in court and show cause why he should not be committed to prison for the judgment debtor's failure to discharge her obligation.

This will spare the Court from needlessly engaging into a more drastic effort while there is a chance that the person cited for the intended action may offer himself for that purpose. A sterner action of arrest and detention will be imposed as a graduated measure.

In consequence of the foregoing, I grant the application. I order, however, that a notice be issued compelling Dipson Balyagati to appear in Court, on the date to be appointed, and show cause as to why he should not be committed to civil prison in satisfaction of the decretal sum due from the judgment debtor.

It is so ordered.

DATED at **DAR ES SALAAM** this 15th day of September, 2022.



M.K. ISMAIL

JUDGE

15.09.2022

