IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY

AT MWANZA

MISC. CIVIL APPLICATION NO.04 OF 2022

(Arising from execution on taxation cause No. 01 of 2021 in the District court of Sengerema)

AMINA KHAMIS .....1ST APPLICANT

JANETH CHARLES ..... 2ND APPLICANT

KULWA MATHIAS ..... 3RD APPLICANT

MWANVUA MASOUND .....4TH APPLICANT

VERSUS

KIKUNDI CHA KAPUA MAMA CHA KATUNGURU

(W) SENGEREMA ..... RESPONDENT

RULING

24th August & 23rd September, 2022

Kahyoza, J.:

This ruling is in respect of an application for revisions **Amina Khamis, Janeth Charles, Kulwa Mathias** and **Mwanvua Masound,** the applicants instituted seeking this court to call and examine the correctness or the propriety of the decision of the district court. The district court ordered the applicants to be detained as civil prisoners for six months. The applicants were not amused. They argued that the district court's order was issued without exploring any other options available for execution of the court's judgment.

The respondent opposed the application contending that after a diligent search, they found out the applicants have no attachable property in execution. They added that there was no any other option to explore.

The is issue is whether the district court's order sending the applicants to prison as civil prisoners was illegal or impropriety.

The respondent sued the applicants successfully in the primary court. Aggrieved by the decision of the primary court, the applicants appealed to the district court. The district court struck out the appeal with costs. The respondents instituted the bill of costs, which was taxed at Tzs. 1,800,000/=. The respondent applied for execution by committing applicants as civil prisoners.

The applicants' advocate averred under paragraphs 7, 8 and 9 of the affidavit that the court ordered that failure to pay by the applicants will be arrested and detained as civil prisoners for six months without (considering) any other options available for execution of the judgment of the court. Further, the applicant's advocate deponed that the court placed burden to the applicants to present inventory before the court of the property they owned for attaching in execution of the decree. He added that, despite the fact that the applicants indicated the willingness to pay the decretal sum to

the respondent, still the taxing master insisted that the said amount be paid to the representatives named in the ruling.

The applicants' advocate submitted that the respondent did not file an affidavit to the district court to prove that the applicants have no property to be attached in execution of the decree. He argued that the district court issue an order to arrest and detain his clients as a first option.

The respondent denied every allegation in the affidavit supporting the applicants' application. The deponents on behalf of the respondent averred that their search revealed that the applicants had no property to be attached in execution. They refuted the contention that the court placed burden to the applicants to present inventory. They argued that the court required them to show cause.

Indisputably, the applicants are judgment debtors. The adjudged the applicants to pay Tzs. 1,800,000/= to the respondents as costs for appeal the applicants had filed. The applicants failed to honour the decree, compelling the respondent to apply for execution of the decree. The law is clear money decree may be executed by detention as civil prisoner of the judgment debtor of by attachment and sale of his property or by both. Rule

of 28 of the Order XXI of the Civil Procedure Code [Cap. 33 R.E. 2019] states that-

> "28. *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 the attachment and sale of his property, or by both."*

It is nowhere provided that before the decree holder show first exhaust other methods of execution before he applies to detention of the judgment debtor as a civil prisoner. Reading the law one my construe that the decree holder's first option is to apply for execution by detention of the judgment debtor and the option is to attach his property. The law reads that the "*Every decree for the payment of money.... may* ***be executed by the detention as a civil prisoner of the judgment debtor or by the attachment and sale of his property, or by both."*** The applicants' advocate did not convince me that the respondent had a duty to first exhaust other modes of execution before applying for detention of the applicants as civil prisoners. Even if, the respondent had an obligation to exhaust other methods of execution before applying for detention of the applicants as civil prisoner, I would still hold that they discharged that duty. The respondent deponed that the applicants had no attachable property, the averment which was not refuted.

The applicants' advocate submitted that the district court placed burden upon the applicants to prove that they have attachable property. This is another lame argument. The law provides that upon receipt of an application of arrest and detention of judgment debtor as civil prisoner, instead of arresting them, it shall call upon them to show cause why they should not be sent to prison. Thus, it is upon the judgment debtor to explain why he should not be detained as a civil prisoner. I see nothing wrong bythe district court requiring the applicants to show cause why they should not be arrested and detained. Rule 35 of Order XXI of the CPC states that-

> *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.*

The applicants, the judgment debtors had a duty to prove the existence of the condition provided under sub-rule (1) of rule 39 of Order XXI of the CPC whereas the respondent's was to prove the conditions under sub-rule (2) of rule 39 of Order XXI of the CPC. The applicants' only ground which would make the court not order their detention is to prove that they

are unable from poverty or other sufficient cause to pay the amount of the decree. I wish to emphasis that I find nothing wrong to call upon the applicants to show cause why they should not be detained as civil prisoners.

I resolved to consider whether the applicants discharged their duty that they are unable from poverty or other sufficient cause to pay the amount of the decree. The applicants' advocate deponed that the applicants indicated their willingness to pay the decretal sum to the respondent, still the taxing master insisted that the said amount be paid to the representatives named in the ruling. The averment of the applicants' advocate implies that the applicants have means to pay the decreed amount but they were annoyed by the district court's order to pay to the respondent's representatives named in the ruling. If that is the case, the applicants were ill-advised. Rule 1 of Order XXI of the CPC provides different ways of satisfying a decree. It states that-

> *1.-(1) All money payable under a decree shall be paid as follows, namely-*
>
> *(a) into the court whose duty it is to execute the decree;*
>
> *(b) out of court to the decree-holder; or*
>
> *(c)* ***otherwise as the court which made the decree directs.***

I wish to point out that the court was justified to direct how the decreed amount ought to be paid. The law quoted above, gives the court

mandate to direct how and to whom the decretal sum should be paid. The applicant had no reason to challenge the district court's order by way of revision.

In the end, I find that the applicants have failed to establish the illegality or impropriety of the district court's order for their arrest and detention as civil prisoners. Consequently, I dismiss the application with costs.

DATED at **Mwanza**, this 23rd day of September, 2022

John R. Kahyoza.
Judge.

Court: Ruling delivered in the virtual presence of Mr. Mushongi the applicant's advocate and in the absence of the respondent. B/C Jackline (RMA) present.

THE HIGH COURT OF TANZANIA
UHURU NA UMOJA
MWANZA

John R. Kahyoza.
Judge.
23/9/2022