

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

AT DAR ES SALAAM

EXECUTION NO.58 OF 2021

(Originating from Civil Case No.224 of 2019)

**THE AGAKHAN HEALTH SERVICES
TANZANIA.....DECREE HOLDER**

Versus

**RESOLUTION INSURANCE (T)
LIMITED.....JUDGMENT DEBTOR**

Last Order: 29th September,2022

Date of Ruling: 07th October,2022

RULING

MGONYA, J.

The Decree Holder, The Agakhan Health Services Tanzania moved this Court seeking to Execute the Court Decree in **Civil Case No. 224 of 2019** by way of attachment of the Bank Accounts of the Judgment Debtor and detention of Judgment Debtor as civil prisoner. The application is made under **Order XXI Rule 9** and **Rule 28 of the Civil Procedure Code, Cap. 33 [R. E. 2019]** herein to be referred as the CPC.

Hearing of the Application proceeded *Experte* against the Judgement Debtor as the effort to procure his attendance was fruitless. It was Mr. Beda, Advocate who represented the Applicant. Being given a room to submit on the prayer, he stated

that the Application for Execution was made under **Order XXI Rule 9 and 28 of the CPC**. The prayer is for the attachment of the Judgment Debtor Bank **Accounts No. 3300511607** held at Oysterbay Harambee Plaza and **No. 0020015400162301 Eco Bank (T) Ltd**; Whereas both Accounts are in the name of Resolution Insurance Ltd. The Counsel also pray for detention of the Judgment Debtor's chief finance officer as civil prisoner in order to satisfy the Decree arising from **Civil Case No. 224 of 2019** in total amount of **Tshs. 189,281,053.86**.

However, up the time of hearing this Application, the Judgment Debtor has not shown cause on why the said Decree should not be executed despite this court orders made on 23rd November, 2021. Hence the counsel prayed this court to issue orders as prayed in the Application.

Having heard the Applicant's counsel submission in support of the application, the issue for determination before this court is whether the application has merit or not.

Section 42 of the CPC 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. The order may be issued upon satisfaction and subject to the provisions of **Order XXI rules 35 to 39** of the **Civil Procedure Code** which states as follows:

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.

(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.

These provisions have been expounded by the Court of Appeal of **TANZANIA** in the case of **GRAND ALLIANCE LTD VS MR. WILFRED LUCAS TARIMO & OTHERS** (Civil Appl. No. 187 of 2019 (Unreported)) where one of the conditions to be fulfilled is the existence of an application for execution of a decree for payment of money by arrest and detention in prison of a Judgment-Debtor. It follows then that the imprisonment of a Judgment Debtor in Execution cannot be ordered unless and until the conditions and limitations are satisfied. 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. The purpose of this warrant is to bring the Judgment-Debtor before the executing court so as to be heard on why he /she should not be committed in prison as a civil prisoner for failure to honour the court order. 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.**

As alluded to above, in the application at hand, upon the application being filed, the court issued a notice to appear to the Judgment Debtor but he defaulted appearance. It has been stated several times by this Court and the Court of Appeal that, the essence behind executing a decree is to let the decree holder enjoy the fruits of the Judgment without much hustle. See the cases of ***AFRICAN BANKING CORPORATION TANZANIA LIMITED VS. MTURE EDUCATIONAL PUBLISHERS LIMITED, Commercial Case No. 73 of 2010*** and ***Grand ALLIANCE LTD VS MR. WILFRED LUCAS TARIMO & OTHERS*** (Supra). With that spirit, the raised issue is answered in affirmative that there is a merit in this application. Hence, I proceed to grant the application for Execution. However, being aware that what the applicant claims from the Judgment Debtor

payment of money to a tune of **Tshs. 189,291,053.86**, I opt for the first mode only which is the attachment of the judgment debtor accounts. Therefore, **Accounts No. 3300511607 held at Oysterbay Harambee Plaza and Account No. 0020015400162301 at Eco Bank (T) Ltd at Dar es Salaam both in the name of Resolution Insurance Ltd are hereby attached subject to the Execution of Decree in Civil Case No. 224 of 2019.**

Costs to be borne by the Judgment Debtor.

Order accordingly.



L. E. MGONYA

JUDGE

07/10/2022