

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

EXECUTION APPLICATION NO. 18 OF 2022

*(Arising from the decision of the High Court in Civil Appeal No. 37 of 2020 dated 26th
September, 2020 before Hon. Masabo J.)*

VEROZENT CATERING SERVICES.....DECREE HOLDER

VERSUS

BIDCO OIL AND SOAP (RUCHIRI) JUDGMENT DEBTOR

RULING

Date of last Order: 03/11/2022

Date of Ruling: 04/11/2022

E.E. KAKOLAKI, J.

Applicant before this court being a decree holder, applied for execution of decree on appeal on this Court in Civil Appeal No. 37 of 2020 dated 26/11/2021. When served, the judgment debtor raised five points of objection which for the purposes of this ruling I find no reasons to list them down.

As a matter of practice when there is a preliminary objection the same has to be addressed first, thus parties were availed with opportunity to address the Court on the said objections. During hearing of the Preliminary Objection, Mr. Godwin Mtandala, Director of the decree holder appeared in person,

while the judgment debtor was represented by Mr. Emmanuel Julius Mashamba, learned advocate. The Preliminary objections were disposed of by way of written submission.

After both parties had filed their submissions in compliance with the court's scheduling order for filing of submissions, while preparing to compose the ruling the Court noted and raised an issue suo mottu as to whether the application before the court is competent or not, for applicant's act of seeks to execute the decree of the primary court of Sinza/ Manzese which was appealed against in this court as the second appellate court. Thus parties were summoned to address the Court on that raised issue and both appeared on 03/11/2022.

Submitting in response to the issue raised by the Court suo mottu, Mr. Godwin Ntandala was brief and straight to the point that, this court has no jurisdiction to entertain the application as the proper court for so doing is the trial court which is Manzese/ Sinza primary Court. He therefore prayed the court to strike out the application without cost.

Mr. Mashamba for the judgment debtor joined hands with the decree holder's submission that, this court has no requisite jurisdiction to entertain the application for execution as the said powers belong to the court which

passed the decree. He supported his stance with the case of **Stanton Mugenyi Vs. Jackson Babyekorera and Another**, Civil Appeal No. 16 of 2015 (HC-unreported) at page 3 where it was stated that, the court which passed the judgment is the one vested with the jurisdiction to execute the decree emanating from the same. He then maintained the same position as that of the decree holder that this application be struck out.

I have keenly considered both parties' submissions, the cited authority as well as perused the entire record. It is uncontroverted fact that, this case originates from the Primary Court of Manzese/Sinza as Civil Case No.69 of 2019, and the High Court was the second appellate court in Civil Appeal No. 37 of 2020. The follow up question, is whether this court has the requisite jurisdiction to entertain the application for execution of the case originating from the Primary Court.

I am in agreement with both parties' submission on the position that, this court is not clothes with jurisdiction to entertain this application as the law is very clear that, the competent court to execute the decree is the court which passed the judgment. This Court in the case of **Stanton Mugenyi** (supra) took a position which I fully subscribe, that it's the trial court that

issued the decree which is vested with powers to execute the decree and not otherwise. In so doing had this to say:

"There is no dispute that the same District court tried the matter and delivered a judgment in favour of the appellant on 29/04/2015. It is generally settled in law that, the court which passed the judgment is the one vested with the jurisdiction to execute the decree emanating from the same..."

Guided by the above principle of law it is my profound view that this court has no jurisdiction to entertain this matter.

Now since this court is not seized with powers to determine the present application, the follow up question is what appropriate course to be taken under the circumstances. Both parties implored the court to strike out the application. I embrace parties' prayer as it is well founded on principle of law that, the only remedy for incompetent application, is to strike it out. See the case of **Mic Tanzania Limited vs Minister of Labour and Youth Development and Another**, Civil Appeal No. 103 of 2004 (CAT-unreported) where the Court held that:

After all, it is now trite law once an appeal or application is found to be incompetent, the only option is to strike it out even if no body had been raised to it.

Therefore, for the reasons stated above, I declare the application before this Court incompetent and the same is struck out.

Since the issue has been raised by the Court suo mottu, I order each party to bear its own costs.

It is so ordered.

Dated at Dar es Salaam this 4th day of November, 2022.



E. E. KAKOLAKI

JUDGE

04/11/2022.

The Ruling has been delivered at Dar es Salaam today 04th day of November, 2022 in the presence of Mr. Godwin Ntanda, director for the applicant and Ms. Asha Livanga, Court clerk and in the absence of the respondent.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

04/11/2022.

