

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

AT DAR ES SALAAM

EXECUTION NO. 37 OF 2021

(Arising from CIVIL CASE NO. 242 OF 2012)

DR. GEORGE OREKU.....1st DECREE HOLDER

JANETH ISAACK2nd DECREE HOLDER

VERSUS

MUFINDI UNIT CARE.....1st DEFENDANT

ROSEMARY M. HAMILTON.....2nd DEFENDANT

ANNA TENGA MZINGA.....3rd DEFENDANT

RULING

MRUMA,J.

2nd Judgment debtor has appeared before me and explained as to why she should not be sent to prison and detained as a civil prisoner.

In terms of the provision of Rule 39(1) of Order XX1 of the Civil Procedure Code [cap 33 RE 2019], if the court thinks that the judgment debtor is unable to pay the amount in the decree due to poverty or other sufficient cause it may disallow the application and order or direct for his release.

Poverty is the state of having few material possession or little income which makes one unable to sustain his own life. Being poor can be confirmed through bankrupt petition being presented in court by the debtor and court make an order to that effect. It is only upon declared bankrupt that a debtor will be discharged from his/ her civil liability. It is not a matter of going to Court and tell the court that "*I can't satisfy the decree because I am poor*". If that would have been the requirement of the law, then very few judgment debtor would satisfy the decree and in essence, satisfaction of court decree would have been optional.

In the present case there is no court order which declared the 2nd judgment debtor as bankrupt and since in terms of section 42(1) and Rule 10(2) (j) (iii) of order XXI of the Civil Procedure Code [cap 33 RE 2019] arrest and detention as a Civil Prisoner of a Judgment debtor is one of modes to enforce execution of the decree, I grant the application as prayed.

As so far the Chief Justice has not made rules prescribing scales of monthly allowances payable for subsistence of the judgment debtor as per section 45 of the Civil Procedure Code, and in terms of the provisions of section 42(c) read together with section 46(1) (a) of the Civil Procedure Code I order as follows;

1. The second Judgment debtor Rosemary M. Hamilton shall be detained at Ukonga Prison for six (6) months.
2. She shall be so detained upon the Decree holder paying for her subsistence allowance T. Shs 150,000/= (say one Hundred and Fifty Thousand) per day payable to the Officer in Charge of Ukonga Prison (see section 46 (1) (b) (1) of the Civil Procedure Code.
3. The Judgment shall be released from detention anytime before the expiration of the six (6) months period on the decree against her be satisfied.
4. In the event the decree holder is unable to pay for her subsistence allowance she shall not so be detained.

In terms of sub- section (2) of section 46 a judgment debtor released from detention shall not be discharged from his/her debt.

It is so order.




A. R. Mruma

Judge

14/11/2022