

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

**AT DAR ES SALAAM**

**EXECUTION NO. 57 OF 2021**

*(Arising from Civil Case No 69 of 2017)*

**MULTIMODAL TRANSPORT  
AFRICA LTD.....PLAINTIFF/JUDGMENT DEBTOR**

***VERSUS***

**STANBIC BANK TANZANIA  
LIMITED.....1<sup>ST</sup> DEFENDANT/DECREE HOLDER**

**BILLO STAR DEBT COLLECTORS.....2<sup>ND</sup> DEFENDANT**

*Date of last Order: 05/10/2022*

*Date of Ruling: 10/02/2023*

**RULING**

**MGONYA, J.**

The 1<sup>st</sup> Defendant/Decree Holder, preferred this Application under **Order XXI Rule 9 and Rule 35(1) and (2) of the Civil Procedure Code, Cap 33 R. E 2019 (the CPC)**, seeking for execution of the Decree of this Court dated 31/08/2018, in Civil Case No. 69 of 2017. The mode in which the assistance of the court is required is by arrest and committing to prison **Syed Nazre Abbas Rizvi** and **Meiya Abbas Rizvi** (Guarantors of the Judgment Debtor) as Civil Prisoners.

Before this Court, the counsel for the Decree holder **Mr. Paschal Kamala**, learned Advocate submitted that the where about of the Judgment Debtors is not known. This fact which was supported by an affidavit sworn by the court process server one **Charles Kajala Sengo**.

However, in the course of preparing the ruling it came to my mind that, the process of issuing a notice calling upon the Judgement Debtors to appear before the court and show cause as to why they should not be committed to prison pursuant to **Order XXI Rule 35(1) and (2) of the CPC**, was improperly made.

In the substituted summons published in Mwananchi Newspaper at page 25, the summons was addressed to the Decree Holder herself instead of the intended Judgment Debtor. That being the case, the intended person did not have any information on what is going on against them before this court. Therefore, to allow the application without availing them the chance to appear and respond to the Applicant's application is tantamount to deny them the right to be heard.

It is the settled position of the law that, the right of a party to be heard before adverse action is taken against such party even if the same decision would have been reached. See **ABBAS**

***SHERALLY AND ANOTHER V. ABDUL S. H. FAZALBOY,***  
**Civil Application No. 33 of 2002 (unreported).**

In the event, **for the interest of this justice this application is struck out.**

No order as to costs.

It is so ordered.



**L. E. MGONYA**

**JUDGE**

**10/02/2023**