

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SONGEA DISTRICT REGISTRY)**

**AT SONGEA.**

**DC. CIVIL APPEAL NO. 12 OF 2022**

*(Originating from Songea District Court in Civil Case No. 44/2016)*

**PASCHAL ELLY MSIGWA ..... APPELLANT**

**VERSUS**

**JUBILEE INSURANCE CO. LTD ..... RESPONDENT**

**JUDGMENT**

Date of last Order: 02/01/2023

Date of Judgement: 09/02/2023

**U.E MADEHA, J.**

The Appellant was dissatisfied with the decision given by the District Court of Songea which struck out his application for the execution on the ground that there is no decree extracted from the judgment. The Appellant filed an appeal on the ground that; "The District Court erred in law and facts to strike out the application for execution which are remediable by amendment".

As a matter of fact, this appeal was canvassed by way of a written submission. The Appellant that is none other than the decree holder was

represented by Mr. D. P. Ndunguru, the learned advocate. On the contrary the Respondent that is the judgement debtor is represented by Mr. Baraka H. Mbwilo.

Principally, Mr. D. P. Ndunguru the Appellant's learned advocate submitted that the Appellant is challenging the decision of the District Court which struck out the application for execution on the account that in the case records there is no decree extracted from the judgment. To add to it, he contended that the Magistrate erred in two (02) points of law, that is there is a day for the pronouncement of the decree and a date for signing the decree nevertheless the later must be the date of the judgment, which implies that, the right to execute the decree accrues from its proclamation and the date of signing. Basically, he averred further that the date of proclamation was the date when the judgment is delivered. He cited with approval the case of **Uniafrico Ltd. and 2 Others v. Exim Bank (T) Ltd.**, Civil Appeal No. 30 of 2006 Court of Appeal of Tanzania (unreported), in which it was held that:

*"... the issuance of a decree is more of an administrative function than a legal one. In fact, the date of issuing the decree is not a requirement under Order XX Rule 7 of the*

*Code. It is important to make this point because there is always a tendency of confusion between the date of issuing the decree. Therefore, the rights to execute decree accrues from the date it is pronounced, not on the date it is signed."*

In addition, he submitted that as it was, in this case the Trial Magistrate confused himself by stating that there was no decree, the Appellant was executing a judgment, not a decree, while in actual facts what was executed was a decree that was pronounced on 20<sup>th</sup> April, 2017 however it was not signed till today. He argued further that there was no any genuine reason for not making the application for the execution of the decree under Order XX1 Rule 10 (2) of the *Civil Procedure Code* (Cap. 33, R.E. 2022). Notably, he submitted further that, the date of the decree is the date of pronouncing the judgment and the time of limitation starts to accrue when the judgment was delivered and not the date of signing the decree.

Mr. D. P. Ndunguru was of the view that Order XX1 of the *Civil Procedure Code* (Cap. 33, R.E. 2022) provides for the remedy of a defective execution application, which is either an order for amendment under Order XX1 Rule 15 (1), (2) and (3) of the *Civil Procedure Code*

(supra) or if the Court is required to certify a copy of order for the same to be produced as provided under Order XX1 Rule 10(3) of the *Civil Procedure Code* (Cap. 33, R.E. 2022).

On the other hand, the Respondent's advocate Mr. Baraka H. Mbwilo submitted that; it is undisputed that up to now the decree in Civil Case No. 44 of 2016 has not been extracted and hence there is no decree. Moreover, he argued that it is undisputed fact that after the delivery of the judgment on 28<sup>th</sup> November, 2017 the Appellant filed Application No. 16 of 2018 for execution and he attached the judgment. Additionally, he added that the issue is whether the application for the execution before the Trial Court was proper or competent. He further averred that the Appellant argued that the application was competent on the reasons that the decree was pronounced when the judgment is delivered and the date of the decree must be that of the judgment. Furthermore, he stated that he was executing a decree which was pronounced on 20<sup>th</sup> April, 2017. Besides, he submitted further that the argument by the Appellant's learned advocate was wrong and misleading this Court since the judgment and the decree are two different documents although they emanate from one case. To crown it all, he cited with approval the following:

1. *The Civil Procedure Code (Supra) Order XX Rule 1, 2, 3, 4 read together with Rules, 6, 7 and 8 of the same Order clearly shows that a decree and judgement are different documents.*
2. *Time of writing a judgment is the first (1<sup>st</sup>) document to be written and after delivering it the decree is extracted from the judgement.*
3. *Order XX1 reads, Execution of Decree and Orders eventually it is not the Execution of Judgment.*
4. *Also, Order XX1 Rule 1(1) states that all money payable under a decree shall be paid as follows: So, the word under the decree means the money payable is what contained in the decree and what is executed is the decree.*
5. *Order XX1 Rule 9 of the Civil Procedure Code specifies and requires a holder of the decree who desires to execute it to apply to the Court which passed a decree. Therefore, it does not need a magician to say what is subjected to execution is a decree and not a judgment.*

As a matter of fact, he contended that the case of **Uniafrico** (supra) is distinguishable from this one because the question in that case was when the right to execute began to accrue, whether the date on the decree or began with the date of the judgment's pronouncement. Basing on the above submitted arguments, the Respondent's learned Counsel prayed this appeal to be dismissed with costs.

Moreover, in his rebuttal submission, the Appellant's learned Counsel that is none other than Mr. D. P. Ndunguru, stated that he strongly believes that the Court's decree is present when the judgment is pronounced. In this case, he stated that the Trial Court pronounced its judgment in Civil Case No. 44 of the 2016 on 20<sup>th</sup> April, 2017 but unfortunately, no decree has been issued. He submitted further that the decree-holder filed an application for execution in the Trial Court through Misc. Application No. 6 of 2018 but it was struck out because there was no decree. He prayed for this appeal to be allowed.

It is important to consider the fact that, I have thoroughly perused the Trial Court's records and found that there is no decree extracted from the judgment. In that regard, I agree with the Respondent's learned advocate, who said that whatever is supposed to be executed is a decree and not a judgment.

Consequently, I find that there is no decree to allow the decree-holder to file an application for execution because what declares rights in civil cases is the decree and not judgment.

To put in a nutshell, the decree-holder cannot execute the judgment but on the decree which is supposed to be signed by the Trial Magistrate on the date of judgment. To crown it all, reference is made to Order XX Rule 7 (supra) which provides that:

*"The decree shall bear the date of the day on which the judgment was pronounced and, when the Judge or Magistrate has satisfied himself that the decree has been drawn up in accordance with the judgment he shall sign the decree."*

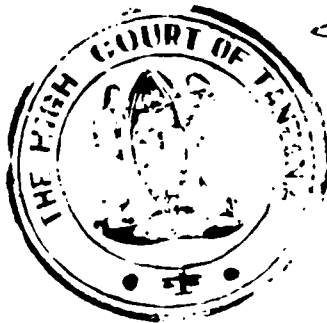
In the absence of the decree, the case is supposed to be remitted to the Trial Court for preparation of the decree, which should be signed on the judgment date. Since the Magistrate who delivered the judgment has been transferred the successor Magistrate will sign the decree on the date the judgment was pronounced. However, under Order XX, Rule 7, a decree shall be signed by the Magistrate after he/she has been satisfied that it has been drawn up in accordance with the judgment. Notably, the period in which the decree-holder will be waiting for his decree will be excluded by the law of limitation of action. This stance was stated in the case of **Tanganyika Cheap Store V. National Insurance Corporation (T) Ltd**, Civil Appeal No. 37 of 2001 Court of Appeal at Dar-es-Salaam.

It is important to note that, the decree is written together with the judgment because it is what gives a person's rights in a civil case. Actually, without a decree, you cannot execute the judgment. The absence of the decree prevents the decree-holder from proceeding with the execution procedures.

To crown it all, the existing defect in this appeal is the absence of a decree, I order that the case records to be remitted to the Trial Court so that the successor Magistrate prepares the decree in accordance with the judgment date.

Finally, from the foregoing it is clear that this appeal has no merit. The appeal is eventually dismissed with costs. It is so ordered.

**DELIVERED** and **DATED** at **SONGEA** this 9<sup>th</sup> day of February, 2023.



A handwritten signature in black ink, appearing to read "Madeha".

**U.E. MADEHA**

**JUDGE**

**09/02/2023**