

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

CIVIL REVISION NO. 02 OF 2023

(Originating from Civil Case No. 202 of 2020 of Mwanza Urban Primary Court and Execution No. 6 of 2022 of Nyamagana District Court)

TIMOTH MEJA (THENOS MEJA).....APPELLANT

VERSUS

JC GEAR GROUP (T) LIMITED.....RESPONDENT

RULING

17th February & 17th February 2023

Kilekamajenga, J.

In the Urban Primary Court of Mwanza, the applicant agreed to pay a claim of Tshs. 20,000,000/= in four instalments to the respondent. Having failed to honour the consent decree of the trial court, the respondent filed execution proceedings against the applicant in the District Court of Nyamagana through application No. 6 of 2022. The executing court ordered among other things that:

"...unless the whole decretal amount of Tshs. 20,000,000/= is paid within 14 days from the date of service of this order, judgment debtor Timothy Meja (Thenos Meja) shall be detained in civil prison for the period of six months (6) in execution of the decree pronounced in Civil Case No. 202/2020 before the trial court."

However, instead of satisfying the decretal sum, the applicant rushed to this court under certificate of urgency seeking to revise the above order of the



District Court. The applicant's application was brought under **section 79(1)(c)(3) and section 95 of the Civil Procedure Code, Cap. 33 RE 2019** and **section 43(3) and 44(1)(b) of the Magistrates' Courts Act, Cap. 11 RE 2019**. The affidavit sworn by the counsel for the applicant, Mr. Alex Job Giriyago, accompanied the application. In resisting the application, the respondent filed a counter affidavit sworn by the respondent's Principal Officer, Mr. James Charles Makanyaga.

In advancing the reason(s) for the application, the counsel for the applicant argued that, the order of execution was given against JC Group Limited who was not a party to the original case. The proper party was JC Gear Exprocom ABT Limited. Though the applicant never objected on the difference of names and has never satisfied the decree, the decree holder called JC Gear Exprocom ABT Limited is a different person from the respondent in this case. He invited the court to consider the case of **CRDB Bank PLC (Formerly CRDB (1996) LTD v. George Mathew Kilindu**, Civil Appeal No. 110 of 2017, CAT at Dar es salaam (unreported) and **Jaluma General Supplies LTD v. Stanbic Bank (T) LTD**, Civil Appeal No. 34 of 2010.

The counsel for the respondent, Ms. Irene Kirindo admitted that the case was commenced by JC Gear Exprocom ABT Limited and the execution was filed by

the respondent. The change of names of the respondent is accounted and the documents in support of such a change of the names are annexed to the counter affidavit. The counsel blamed the applicant for being reluctant to appear during the hearing of the execution application despite being served with five summonses. However, despite the minor difference in names, the search from Brela shows that the directors are still the same. She further argued that, the applicant admitted the claim at the tune of Tshs. 20,000,000/= and promised to settle the decretal sum though he has not paid a penny todate. The counsel distinguished the submitted case from the instant case.

When re-joining, the counsel for the applicant was of the view that, the court cannot work on speculations and that every registered entity has its own legal personality. He insisted for the application to be allowed.

The instant application does clearly show the difference in the names between JC Gear Group (T) LTD and JC Gear Exprocom ABT Limited. The latter name is the decree-holder in the trial court whereas the former name is the respondent in this case. The counsel for the respondent gave sound explanation on the change of names and this court is satisfied on the documents attached to the counter affidavit. She further hinted on the uncontroverted fact that, the applicant never bothered to appear during the execution proceedings despite

being served with five summonses. In my view, the applicant who admitted the respondent's claim and later never bothered to clear the decretal sum nor appear to defend the execution proceedings had no justification to rush to this court and allege a flimsy point on the difference in names.

In my view, if the applicant wanted justice and if he does not want to employ legal technicalities to evade his due obligation, he could have approached the respondent for clarification or could have applied to set aside the exparte order of execution for him to get clarification on the change of names. In my view, court business should only protect the rights of litigants with serious need of justice but not busy bodies who just want to visit court buildings as a coffee shop. This court has refused to protect litigants who want to use court processes to take away or delay the rights of their adversaries. The Constitution of the United Republic of Tanzania has a sound provision allowing courts to dispense justice without being tied to technicalities. The overriding objective has further amplified on the core business of the court, which is to deliver justice to parties and not afford weight to matters which do not give justice. When a person comes to court, his/her hands should be clean hence the well-known maxim; he who comes to equity must come with clean hands.

This is a temple of justice and cannot be turned into a house of technicalities where lawyers play their games. What kind of clean hand does the applicant have in this matter that this Honourable Court should step in to protect his rights. A person who admitted to the claim and promised to pay it within four instalments; he was subpoenaed with five court summonses but wilfully refused to attend, should not be allowed to employ some legal technicalities on the decree holder. In my view, the applicant is simply taking another step to delay the execution of the decree based on his admission. Unless he indicates that he has already or willing to satisfy the decretal sum, he has no right to congest this temple of justice with minor cases. I find no merit in the application and hereby dismiss it with costs. It is so ordered.

DATED at **Mwanza** this 17th day of February, 2023.



Ntemi N. Kilekamajenga.

JUDGE

17/02/2023



Court:

Ruling delivered this 17th February 2023 in the presence of the counsel for the applicant, Mr. Alex Job (Adv) and the counsel for the respondent, Ms. Irene Kirindo (Adv). Right of appeal explained.



Ntemi N. Kilekamajenga.
JUDGE
17/02/2023

