

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MBEYA DISTRICT REGISTRY**

**AT MBEYA**

**MISCELLANEOUS CIVIL APPLICATION NO. 2 OF 2023**

(Originating from the High Court of Tanzania at Mbeya Application for Execution No. 13 of 2020 arising from Civil Case No. 16 of 2016)

**TEOFILO KISANJI UNIVERSITY ..... APPLICANT**

**VERSUS**

**THE BOARD OF TRUSTEE OF PUBLIC SERVICE SOCIAL SECURITY FUND  
(PSSSF) ..... 1<sup>ST</sup> RESPONDENT**

**PLANET AUCTION MART CO LTD ..... 2<sup>ND</sup> RESPONDENT**

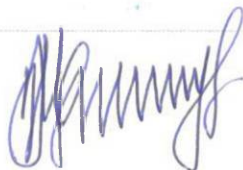
**RULING**

**8 & 9/03/2023**

**NGUNYALE, J.**

The applicant TEOFILO KISANJI UNIVERSITY by way of chamber summons under Order XXI Rule 81 (1) and (2) of the Civil Procedure Code Cap 33 R. E 2019 supported by an affidavit sworn by her advocate one Martha Gwalema preferred the present application seeking for orders;

*That this court be pleased to order that the execution proceedings which led to issuance of proclamation of sale on 17<sup>th</sup> January, 2023 on the applicant's property in respect of decretal amount of Tshs 534,967,303/=, House Title No. 1989 Plot No. 429 Block "M" located at Forest, Mbeya in execution of a decree from Execution Case No. 13 of 2020 by Hon. Kahyoza Deputy Registrar, be*



*postponed in as such as, the applicant intends to lease the property to settle the decretal amount in favour of the 1<sup>st</sup> respondent.*

The respondents resisted the application by counter affidavit.

In the affidavit adopted in favour of the application, it was deponed that in Execution No. 13 of 2020 the court ordered attachment and sale of the immovable property House in title No. 1989, plot No. 429 Block "M" located at Forest, Mbeya to recover 624,967,303 arising from a judgment in Civil Case Number 16/2016 delivered by Mambi, J on 15<sup>th</sup> April, 2020. Immediately after the order of attachment and sale, the applicant managed to pay Tshs 90,000,000/= to the respondent (Decree Holder) making decretal amount which the 1<sup>st</sup> respondent currently owes the applicant to be Tshs 534,967,303/=. The respondent later prayed for an order for proclamation of sale which was issued on 17<sup>th</sup> January, 2023 by the Deputy Registrar on the applicants' property namely above in respect of decretal amount Tshs 534,967,303/=.

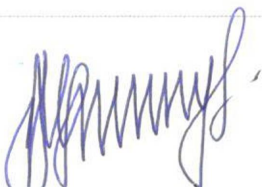
The applicant is intending to lease the impugned property and subject the tenant to pay the 1<sup>st</sup> respondent annually on the agreed rent amount for such period of time as agreed by the parties until final payment of the decretal amount amounting to Tshs. 534, 967, 303/=.



The application was called for hearing on 8<sup>th</sup> day of March 2023, the applicant was dully represented by Ms. Martha Gwalema learned Counsel and the respondents were enjoying the service of Erick Haule learned Stated Attorney.

Ms. Gwalema started her submission by inviting the court to postpone the sale of the property which the executing court has issued the proclamation of sale to allow the applicant to lease the impugned landed property for the same aim of settling the decretal sum 534,967,303/=. They are read to lease the same at a monthly rent of 500,000/= and another 9,500,000/= will come from other sources of the applicant making a total of 10,000,000/= to be paid to the 1<sup>st</sup> respondent monthly. The very idea of making payment of 10,000,000/= per month has been discussed with the respondents and the 1<sup>st</sup> respondent has no objection over the same. She concluded her submission by praying the court to vacate the proclamation order issued on 17<sup>th</sup> January 2023.

Mr. Haule from the outset declared their stance that they are in support of the prayers of the applicant instead he wanted to be assured about the date when the payment of 10,000,000/= per month will start. He said that any kind of delay means the penalties will start accruing. In a brief rejoinder Ms. Gwalema suggested implementation to start from May 2023.



I have carefully considered the contents of the affidavit and the rival submission and noted that the proclamation of sale was legally issued to satisfy the decree in favour of the 1<sup>st</sup> respondent. Even the consensual position stated by the parties in the present application aims to satisfy the decree by another means or mode. The applicant in the present case does not want to avoid execution but she wants execution to be done in the alternative way. Execution solely aims to satisfy the judgment or the decree pronounced by the court as stated in the case of **Shell and BP Tanzania LTD and The University of Dar-es-Salaam**, Civil Application No. 68 of 1999 Court of Appeal of Tanzania at Dar-es Salaam. The submission of Ms. Gwalama is to the effect that leasing and the amount of money to be increased aim to complete execution.

In the circumstance of the prayers in the present application it may sound correct to state that execution is not to deprive a party from his property or his right but to make him pay the decretal sum or satisfy the decree as ordered by the court of law. Leasing of the impugned property and the money to be increased will make execution complete after a period of time when the 1<sup>st</sup> respondent will be paid in full the decretal sum. On when is execution completed, Lord Denning M.R. in **Re OVERSEAS**



**AVIATION ENGINEERING (G.R) Ltd.** (1963) 1 Ch. 24 at page 39 had

this to say:

*"Execution ----- is completed when the judgment creditor gets the money or other thing awarded to him by the judgment.*

Since the respondents supports the application, the court has no reason to differ with such position because both positions aim to satisfy the decree in Civil Case No. 16 of 2016 determined by the High Court of Tanzania Mbeya Registry on 15<sup>th</sup> April 2020. In the end result the application is hereby granted and Proclamation of Sale dated 17<sup>th</sup> January 2023 is postponed, the applicant will settle the decree by depositing 10,000,000/= Tshs born from the lease agreement and internal sources from May 2023 until the sum of 534,967,303/= is settled. In case of any default by the applicant the parties shall be reverted to the original mode of execution.

The application is hereby granted, considering the circumstance of the matter I grant no order as to costs.

Dated at Mbeya this 8<sup>th</sup> day of March 2023.



  
**D. P. Ngunyale**  
**Judge**

Delivered this 8<sup>th</sup> day of March 2023 in presence of Ms. Martha Gwalema  
learned Counsel for the applicant and Erick Haule learned State Attorney  
for the respondent.



  
**D. P. Ngunyale**  
**Judge**