

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL REFERENCE NO. 5 OF 2022**

(Arising from Execution No. 157/2018, Kisutu Resident Magistrate Court)

MAX KIRITA MINJA.....APPLICANT

VERSUS

JOHN EPIMAKI KESSY.....RESPONDENT

RULING

9/11/2022 & 6/02/2023

Luvanda, J.

The Applicant named above filed this reference under the enabling provision of Order XLI rule 1 of the Civil Procedure Code, Cap 33 R.E 2019, seeking this court to review and quash the decision in Execution No. 157/2018 Kisutu Resident Magistrate Court on account of being unrealistic and unprocedural. In his affidavit, the Applicant deposed that he is willing to pay the Respondent affordable amount based on his economic stance and he cannot afford to pay a sum of instalment of 3,816,666 in three months, as ruled in execution proceedings above.

In a counter affidavit, the Respondent stated that the Applicant was given opportunity and mercy to pay the debt in three instalments of Tsh.

3,816,666 each, considering the matter has taken long since 2007. That the Applicant was given chance to pay the decretal sum since 2008 but neglected without any justification.

Mr. Nickson Ludovick learned counsel for Applicant submitted briefly that the Applicant is a retired officer and due to his financial status, he cannot afford to pay, and asked to pay Tsh. 200,000 per month.

In opposition, Mr. Idd Ally Mrema learned Advocate for the Respondent submitted that the Applicant was given time to pay but did not pay even a single cent. That in 2008 the Applicant was given an opportunity to pay in a monthly instalment of 200,000/= but he never complied. He submitted that the Applicant is wasting time of the court and for Respondent.

As I have indicated above, this reference was made under Order XLI rule 1, Cap 33 (supra). According to this provision, reference can only be made to this court where any question of law or usage having the force of law arises, or where the court entertains reasonable doubt on executing the decree.

The Appellant have ably failed to demonstrate if there is any question of law or usage have arise or that the trial court have entertained any

reasonable doubt on execution of impugned decree. A mere fact that an instalment of 3,816,666 is not affordable, cannot be said is a question of law or usage having the force of law, nor can be said the court entertained any reasonable doubt on execution of that decree. At any rate a decretal sum which was by way of admission and settlement out of court registered on 30/5/2008 and remain unpaid to date, it cannot be said can entertain any doubt on its execution. Actually the applicant have been buying time since then to date.

The application is dismissed with costs. The file of the trial court to be remitted back for continuation of execution proceedings.



E.B. Luvanda
JUDGE
06/02/2022

