

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM SUB DISTRICT REGISTRY)**  
**AT DAR ES SALAAM**  
**EXECUTION NO. 55 OF 2022**

(Originated from Bill of Costs No. 162 of 2020)

**MAULID RAMADHANI.....DECREE HOLDER**

**Versus**

**SULEIMAN MAULID RAMADHANI..... JUDGMENT DEBTOR**

**RULING**

Date of Last Order: 23/03/2023

Date of Ruling: 24/03/2023

**E.E. KAKOLAKI, J.**

Before this Court the applicant/ decree holder preferred this application under Order XXI Rule 10(2)(j)(iii) and Rule 20 of the Civil Procedure Act, [Cap 33 R.E 2019], praying for an order for judgment debtor/respondent to show cause as to why he should not be sent to prison as a civil prisoner, unless he satisfies a total amount of Tshs. 3,160,000 payable to the decree holder plus the costs of this application. The prayer emanates from the decision of this Court Bill of Cost No. 162 of 2020, handed down on 19/04/2022 (Hon. J.E. Fovo-Taxing officer) in execution of this Court's order whereby the judgment debtor was condemned to pay cost of the decree holder in Misc. Civil Application No.599 of 2019. The amount taxed by the taxing officer of 3,160,000/- only in which the judgment debtor seem to have

failed to satisfy hence the present applicant. upon the application filed a summons for the judgment debtor to show cause as to why he should not be sent to prison for failure to satisfy the decree of this Court was issue. The judgment debtor appeared in Court 19/10/2022 before the matter was scheduled to hearing on 08/12/2022.

On 08/12/2022 when the matter came for hearing, decree holder had representation of Mr. Amon Rwiza, while the judgment debtor appeared in person, unrepresented and both parties were heard viva voce. Submitting in support of the application Mr. Rwiza informed the court that, the judgment debtor had not made good the said payment and that efforts to establish any property belonging to the judgment debtor proved futile thus, this application. He argued that, the decree holder is able and ready to comply with order and directives of this court for effecting its orders on decree holder's prayer. And further that, the decree holder is ready for any negotiations and offer from the judgment debtor on how to make good the decree. He finally implored the court to be pleased to order the judgment debtor to be imprisoned until when the decree of this court is satisfied.

After that submission , the judgment debtor, sought for an adjournment so as to prepare his defence after consulting his lawyer, the prayer which was

cordially granted and the matter was scheduled to come for further hearing on 23/03/2023 with directives that, the judgment debtor will appear with his lawyer if any secured on that date, or else proceed to fend for himself.

On the next date scheduled for hearing which is on 23/03/2023, the Court's orders were not complied with by the judgment debtro, as neither himself nor his lawyer appeared in court to explain the reasons as to why he should not sent to prison to. Following that non-compliance of court's orders by the judgment debtor, Mr. Rwiza prayed the court to set a ruling date and proceed to grant the application by ordering his arrest and imprisonment, since he has failed to show cause as to why he should not be sent to prison as the civil prisoner.

Notably, the power of this Court to commit a Judgment Debtor to jail as a civil prisoner is provided under Order XXI Rules 35 (1) and (2) of the CPC which provides that:

*35(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention as a civil prisoner of a Judgment Debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the*

*Court on a day to be specified in the notice and show cause why he should not be committed to prison.*

*(2) Where appearance is not made in obedience to the notice, the court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment debtor.*

In application of this nature Order XXI Rule 35 (1) and (2) crowns this Court with powers and option to either issue arrest warrant to the judgment debtor or issue summons for him to show cause first as to why he should not be sent to prison as civil prisoner for failure to satisfy the decreed amount. The ultimate end result of failure to show cause is for the Court to order his arrest and imprisonment until the decreed amount is satisfied. However, the law is settled that, prior to issue of arrest order to the judgment debtor, some conditions must be followed. The said conditions were adumbrated by the Court of Appeal in the case of **The Grand Alliance Ltd vs. Mr. Wilfred Lucas Tarimo and Others**, Civil Application No. 187 of 2019 (CAT) after revisiting the Indian decision in the case of **Mahadev Prasad v. Ram Lochan Air** 1981 SC 416, where the Court had this to say:

*It follows then that the imprisonment of a judgment debtor in execution cannot be ordered unless the conditions and limitations are satisfied. One of those conditions is that there*

*must be an application for execution of a decree for payment of money by arrest and detention in prison of a judgment debtor (See sections 42 and 44 and Order XXI rule 10 of the code). After receipt of the application, the executing court has discretion to issue a notice to show cause to the person against whom execution is sought, on a date to be specified in the notice, why he should not be committed to prison or to issue a warrant of his arrest (See Order XXI rule 35(1) of the Code).*

*The purpose of this warrant is to bring the judgment- debtor before the executing court and it is not an automatic order for committal as civil prisoner because the executing court is required to be satisfied with the conditions stated under order XXI rule 39 (2) of the Code before committing a person to prison.*

In this matter the judgment debtor was in court on 08/12/2022, when the matter came for hearing, and was availed with an opportunity to show cause as to why he should not be sent to prison as civil prisoner for failure to satisfy the claimed amount. Undisputedly after the decree holder had submitted on the merit of the application, he was the one who sought for adjournment of the matter to 23/03/2023, where he failed to adhere to the court's order without justifiable cause, the act which is very much detested, as the Court cannot sit at its back witnessing the lawfully issued orders stifled by the

parties without any justifications. This Court has been jealous of its decisions and would not remain mute seeing a party despising or degrading them in as long as they remain valid. In the case of **Shabani Amuri Sudi (the administrator of the estate of the late Amuri Sudi vs Kazumari Hamisi Mpala**, Misc. Land Application No.30 of 2019, this Court had this to say on disobedience of court orders or decisions:

*"Court orders must be **respected, obeyed and complied with religiously**. Likewise, court proceedings are controlled by the presiding judge or magistrate, **parties cannot decide to do contrary to the court's order. Tolerating them will amount to voluntary invitation to judicial chaos, disrespect and injustice.**" (Emphasis supplied)*

In the present application, since the judgment debtor was availed with right to be heard but decided to waive it for non-appearance after he was granted the prayer for adjournment and since the decree holder wants to enjoy the fruits of the decree given in his favour and has so prayed this Court to act in terms of Order XXI Rule 35(2) of the CPC, it is the finding of this Court that the Judgment Debtors has failed to show cause as to why he should not be sent to prison as a civil prisoner. In the premises this Court remains with no option than to issue an order for arrest and detaining of judgment debtor **Suleiman Maulid Ramadhani** as civil prisoner.

Therefore, pursuant to the provisions of Order XII Rule 35 of the Civil Procedure Code Cap 33 (R.E. 2019), I hereby grant the application and order that, unless the whole decretal amount of Tshs 3,160,000= is paid within 21 days from the date of this ruling, the Judgment Debtor Suleiman Maulid Ramadhani, shall be arrested and detained as a civil prisoner in Civil Prison in Tanzania for the period of six (6) months in the execution of a decree of this Court pronounced in Bill of cost No. 162 of 2020. The said 21 days expires on 14<sup>th</sup> April, 2023. In the event the judgment debtor fails to satisfy the court decree, the arrest and detention be affected from 17<sup>th</sup> April, 2023.

The Applicant/Decree Holder shall pay Tshs. 300,000/= (say Three Hundred Thousand) only per each month to the Prison Officer of Ukonga Prison being subsistence allowance for custody of Judgment Debtor. Should the decree holder fail to pay that amount at every start of the month Suleiman Maulid Ramadhani shall not be detained.

In terms of sub-section (2) of section 46 of the Civil Procedure Code, [Cap. 33 R.E 2019] a release from prison after serving the ordered six (6) months shall not act as a discharge from the debt.

No order as to cost.

It is so ordered.

DATED at Dar es salaam this 24<sup>th</sup> March, 2023.



E. E. KAKOLAKI

**JUDGE**

23/03/2023.

The Ruling has been delivered at Dar es Salaam today 24<sup>th</sup> day of March, 2023 in the presence of Mr. Amon Rwiza, advocate for the applicant, the respondent in person and Ms. Tumaini Kisanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

**JUDGE**

24/03/2023.

