

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**EXECUTION CASE NO. 82 OF 2022**  
*(Originating from the Civil Case No. 62 of 2020)*

**G.S HOLDINGS CO. LTD.....APPLICANT/DECREE HOLDER**

**VERSUS**

**REGANIBERT L. MWANAWALIFA.....RESPONDENT/JUDGMENT DEBTOR**

**RULING**

*27/04//2023 & 26/07/2023*

**BWEGOGGE, J.**

The applicant (decree holder) named above has commenced execution proceedings herein in respect of the decree entered by this court against the respondent (judgment debtor) for payment of damages to the tune of TZS 150,000/-. The decree-holder has prayed for an order of arrest and detention of the judgment debtor herein as a civil prisoner to satisfy the decretal amount of TZS 150,000,000/.

The origin of the execution proceedings herein is traced from the civil proceedings commenced by the applicant herein in respect of Civil Case No. 62 of 2020 whereas the applicant sought judgment and decree against the respondent for payment of the outstanding sum and special damages to the tune of USD 380,000,000/=, equivalent to USD 870,200,000/=, among others. On 03<sup>rd</sup> September, 2021, the parties herein struck a compromise through amicable settlement whereas the respondent covenanted to pay the applicant the lesser amount of TZS 150, 000,000/= within the period of three months from 28<sup>th</sup> February, 2022 to 30<sup>th</sup> June, 2022. Allegedly, to date, the respondent has let the grass grow under his feet, for his inaction to discharge his covenanted obligation. Hence, this application.

The decree-holder and judgment debtor was represented by Messrs Matuba Nyerembe and Dennis Michael Msafiri, the learned advocates, who argued the matter herein orally.

Mr. Nyerembe, the counsel for the applicant, in substantiating this application submitted that the parties herein having agreed to settle their dispute amicably, the respondent agreed to pay the applicant less amount of TZS 150,000,000/= payable in three installments, commencing from 28/02/2022 to 30/05/2022. That to date no single cent has been paid to

the decree-holder despite several reminders. Hence, the applicant has no any other option but to institute the execution proceedings herein.

Further, the counsel argued that the applicant has failed to find any property belonging to the judgment debtor for attachment. The counsel charged that the judgment debtor has deliberately concealed his properties. Hence, the decree-holder has no other means to execute his decree but to employ the mode preferred herein. The counsel asserted that the applicant herein has satisfied the condition precedent for grant of the order sought for. The counsel referred to the case of **Grand Alliance Ltd vs Mr. Wilfred Lucas Tarimo and Others** (Civil Application 187 of 2019) [2020] TZCA 191 to bolster the point.

Lastly, the counsel opined that the grounds advanced by the respondent in that he failed to satisfy the decree for the reason of poverty (insolvency) and closure of his bank account by the Tanzania Revenues Authority are misconceived. That the respondent was required by law to furnish proof of the alleged poverty/ insolvency. The decision of this court in the case of **Suleiman Kalimbe vs Charles Anthony** (Misc. Land Application 39 of 2022) [2022] TZHC 13572 was cited to bolster the point.

In tandem with the above, the counsel enlightened this court that the fact deponed in the affidavit sworn by the applicant in that his bank account was closed by the Tanzania Revenues Authority was discussed during the amicable settlement whereas the respondent assured the applicant that he would manage to settle the agreed sum notwithstanding the purported closure of his bank account.

In reply, Mr. Msafiri, the counsel for the respondent, submitted that the applicant (decree holder) has not discharged her duty to find the properties of the respondent (judgment-debtor) for attachment in order to satisfy the decree of this court. The counsel contended that the order for arrest and detention is subject to conditions and limitations, not the blank cheque for the decree-holder. That the case of **Grand Alliance Ltd vs Mr. Wilfred Lucas Tarimo Tarimo** (supra) has set conditions to be fulfilled as per s. 42 and Order XXI, Rule 39 of the CPC.

Further, the counsel argued that it has not established that the judgment debtor herein has acted in bad faith with the intention to obstruct the execution of the decree. That there is no evidence brought to establish that the judgment debtor owned properties on the date this court passed the decree sought to be executed and acted in a way to obstruct or delay the execution of the decree. The counsel concluded by reiterating that the

judgment debtor's bank account was impounded by the Tanzania Revenues Authority; hence, the respondent is financially incapacitated and without the means to sustain himself. On the above premises, the counsel prayed the application herein be disallowed.

In Rejoinder, the counsel for the applicant reiterated that insolvency needs proof as per the recent decision in the recent case of **Suleiman Kalimbe** (supra). The counsel asserted that it is strange that while the counsel for the respondent advanced poverty and insolvency as the ground for contesting this application, the same contradicts himself by alleging the applicant for failure to discharge his duty of finding properties belonging to the judgment debtor herein for attachment in order to satisfy the decree. This is all about the arguments made by counsel herein.

The issue determination is whether the order sought for is tenable.

The decree-holder is entitled to enjoy the fruits of the decree entered in his favour. It is not in the interest of justice that the decree-holder should be unreasonably prevented to execute his decree. The counsel for the respondent, in a bid to insulate the respondent from the execution proceedings herein, advanced two grounds: **One**, the applicant has failed to discharge her duty of finding the respondent's properties for

attachment. **Two**, the respondent is poor/insolvent; hence, financially incapacitated to satisfy the decree of this court.

From the outset, I am on all fours with the counsel for the applicant in that it is strange that while the counsel for the respondent is alleging that the applicant failed to discharge her duty of finding properties of the judgment debtor herein for attachment in order to satisfy the decree, the same advances the ground of poverty and, or insolvency in contesting the execution proceedings commenced by the applicant. Therefore, this court is left in limbo on whether the respondent herein possesses the properties which the applicant is obliged to discover for attachment or the same is otherwise insolvent. Admittedly, poverty is a sound ground for disallowing an application for execution of like nature in terms of Order XXI, rule 39 (1) of the CPC.

Be that as it may, the purported poverty/insolvency ought to have been proved. The respondent was obliged to satisfy this court that he is unable to satisfy the decree on ground of poverty. In similar circumstances, this court in **EURAFRICAN Bank (Tanzania) Ltd vs St. Tina and Company Ltd**, Commercial Case No. 80 of 2006, HC (unreported) had this to say:

*"While poverty is good ground for disallowing an application for arrest and detention in Civil Prison (see Rule 39 (1) of Order XXI of the CPC), it has to be proved. In terms of section 44 (2) of the Civil Procedure Code, a person is deemed to be poor if he has been declared insolvent or bankrupt pursuant to the laws relating to insolvency and bankruptcy."*

See also the decision of this court in **Suleiman Kalimbe vs Charles Anthony** (supra) in this respect. Taking into consideration the circumstances of this case, I am of the settled view that the purported poverty/insolvency should have been proved. The respondent herein failed to discharge this obligation. I need not reiterate the fact that the applicant's counsel enlightened this court that the purported closure of the respondent's bank account by the Tanzania Revenues Authority was considered in striking the amicable settlement. This fact remains uncontroverted. Consequently, the plea of insolvency is not accorded weight.

As validly argued by the counsel for the applicant, the conditions precedent for grant of an application for an order of arrest and detention in the execution of decree are appositely stated in the case of **Grand Alliance Ltd vs Mr Wilfred Lucas Tarimo and 4 others** (supra) as follows:

*"It follows then that the imprisonment of the 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)."*

It is needless to point out that the applicant has lodged an application for the order of arrest and detention in the execution of the decree. And the respondent/judgment debtor herein was summoned to show cause why the execution of the decree in the mode preferred should not ensue whereas the same failed to. Based on the foregoing, I can safely arrive to the conclusion that the applicant has satisfied the conditions precedent set in the case of **Grand Alliance Ltd vs Mr Wilfred Lucas Tarimo and 4 others** (supra) to be entitled to grant of the order sought for.




In view of the foregoing, I hereby find that the respondent has failed to show cause why the order of the arrest and detention in the execution of the decree arising from consent judgment should not be issued against him. I, therefore, hereby allow the application herein. Consequently, unless the respondent pays the decretal amount within 90 days from the order of this court, the same to be arrested and detained as a civil prisoner for the period of six months in execution of the decree in Civil Case No. 82 of 2020. The applicant/decreet-holder shall be obliged to provide for the upkeep of the respondent/judgment debtor as provided under Order XXI, rule 38 (2) (3) (4) and (5) of the CPC. The applicant shall have her costs.

I so order.

**DATED at DAR ES SALAAM this 26<sup>th</sup> day of July, 2023.**



  
**O. F. Bwego**  
**JUDGE**