

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB REGISTRY

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 611 OF 2023

(Arising from the Judgement of this Court in Civil Case No. 201 of 2016)

SEIF ALLY MATEKE.....APPLICANT

VERSUS

AHMED ATHUMAN..... RESPONDENT

RULING

Date of last Order: 2nd May 2024

Date of Ruling: 7th May 2024

MTEMBWA, J.:

Having gone through the records, I feel instructive to borrow a leaf from the wise testaments of this Court in ***Zaina H. Lyelu v Basola Lumato & Another (De) Civil Case No. 8 of 2009*** as quoted bellow;

Now, what is the effect of a court order that carries instructions which are to be carried out within a predetermined period? Obviously, such an order is binding. Court orders are made in order to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of justice will grind to a halt or if will be so chaotic

that everyone will decide to do only that which is conversant to them.

In **Civil Case No. 201 of 2016**, the Applicant herein preferred a suit against the Respondent together with other two (the Ministry of water and Irrigation and Hon. Attorney General) who are not subjects of this Application, for tortuous action arising from negligence of the Respondent who was also an employee of the Ministry of Water and Irrigation.

According to the facts, on 30th August 2015, at around 17:45 hours at Muslim area along Tabata Road within Ilala District in Dar es salaam Region, the Respondent while carelessly and negligently driving a motor vehicle with registration **No. STK 6544 make Nissan Patrol** owned by the Ministry of Water and Irrigation, on the public road, extended to the extreme right side of the road and failed to control it as a result knocked the Applicant's vehicle with registration **No. T 141 AVW make Toyota Town Ace Noah**. That as a result of the said accident, the Applicant's motor vehicle was seriously damaged and other two passengers were seriously injured.

Having evaluated the evidence adduced during hearing, this Court resolved as follows;

All said and done, the plaintiff's case against the 2nd and 3^d defendant is hereby dismissed without costs. As regard to the plaintiff the judgment is entered in his favour to the extent indicated as hereunder:

- 1. The 1st defendant shall repair the plaintiff's motor vehicle in the recommendable garage or pay all the repair costs of damaged parts of the vehicle as indicated in the Police vehicle inspection report within three months from the date of this judgment or in the alternative compensate him with the motor vehicle purchase price to the tune of Tshs. 14,000,000/- in lieu of repair of the vehicle.*
- 2. The 1st defendant shall pay the Plaintiff Tshs. 5,000,000/- as general damage.*
- 3. The 1st defendant to pay for the costs of this suit*

Simply to put, the Respondent was ordered to repair the Applicant's motor vehicle in the recommendable garage or pay all the repair costs of damaged parts of the vehicle as indicated in the Police vehicle inspection report within three months from the date of judgement (12th August 2022) or in the alternative, compensate him with the motor vehicle purchase price to the tune of **Tanzanian Shillings 14,000,000/=** in lieu of repair of the vehicle. He was also

ordered in addition to pay to the Applicant **Tanzanian Shillings 5,000,000/=** as general damage and costs of the suit.

The Applicant unsuccessfully demanded compliance of the said Decree. As a result, he filed to this Court **Execution No. 29 of 2023** where an order to attached the Respondent's salary could not materialize due to the inability to secure his attendance in Court. The Applicant then had no option but to file this Application seeking for orders to commit the Respondent as a civil prisoner and orders incidental thereto under ***section 42 (c) and order XXI rule 35 (1) of the Civil Procedure Code, Cap 33 RE 2019.***

Previously, this matter was presided over by Hon. Kakolaki, J who has been reportedly to have been transferred to another duty station. As such, it was reassigned to me for final determination.

When this matter was placed before me for orders on 15th February 2024, Mr. Baraka Chipamba, the learned counsel, appeared for the Applicant whereas the Respondent was recorded absent. Mr. Chipamba informed this Court that, the Respondent was served through a Court broker on 6th November 2023 but he refused to accept the summons from this Court. The Affidavit of proof of service from **Uncle Mo Enterprises** was received to form part of the

records. I then ordered the Applicant to facilitate service of summons to the Respondent by publication which as per the records, was effectively done through Mwananchi Newspaper on 20th February 2024. Consequently, at the request of Mr. Chipamba, I ordered hearing of this Application to proceed by way of written submissions *exparte* against the Respondent.

Expounding further on the Application, Mr. Chipamba submitted that, the Respondent has blatantly and in disregard manner failed to honour the terms or orders of this Court in Civil Case No. 201 of 2016. That, Execution No. 29 of 2023 was also unsuccessful as they could not attach the Respondent's salaries. In the course they learnt that, the Respondent has no immovable properties capable being attached. As a result, they resorted to file this Application seeking for an order to commit the Respondent as a civil prisoner. He added that, although the Respondent was properly served with the notice to show cause, he chose not to appear. To fortify, Mr. Chipamba cited ***Order XXI Rule 35 (1) and (2) of the Civil Procedure Code (supra)*** and the case of ***Kuraishi Idris Kosku & Ziaul Islam Abdulaziz Vs. Mariam Y. Abeid, Execution No. 89 of 2021, High Court at Dar es Salaam.***

Indeed, the right to commit a judgment debtor to jail as a civil prisoner is provided for under **Order XXI Rule 35 (1) of the Civil Procedure Code (Supra)**. The law provides that;

(1) Notwithstanding anything in these rules, where an application is for the execution of a decree of payment of money by 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 of arrest of the judgment debtor.

It is on records that, the Respondent unjustifiably failed to satisfy the Decree of this Court in **Civil Case No. 201 of 2016**. Blatantly and in disregard manner also failed to show cause why he should not be detained as a civil prisoner. In the circumstances, this Application is hereby granted on the following terms;

1. The Respondent is hereby ordered to comply with the terms of Decree of this Court in **Civil Case No. 201 of 2016** within twenty-one (21) days from today.

2. Failure to abide by the above, the Respondent, one **Ahmed Athuman**, shall be committed and or detained as a civil prisoner in any of the prisons in Tanzania mainland for the period of six (6) months from the day of detention.
3. While in prison, the Respondent shall be released therefrom any time upon compliance with the terms of the Decree in **Civil Case No. 201 of 2016**.
4. In collaboration with the prison administration, the Honourable Deputy Registrar of this Court shall determine the amount payable as subsistence allowance.
5. The Applicant shall recover his costs of this Application.

It is so ordered.

Right of appeal explained.

DATED at **DAR ES SALAAM** this 7th May 2024.



H.S. MTEMBWA
JUDGE