

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB-REGISTRY OF MWANZA**

**AT MWANZA**

**EXECUTION APPLICATION NO. 32 OF 2023**

(Arising from Taxation Cause No. 4 of 2020)

**NMB BANK PLC..... APPLICANT/DECREE HOLDER**

**VERSUS**

**JEPHTA JEREMIA MACHANDARO.....RESPONDENT/JUDGMENT DEBTOR**

**RULING**

12/3/2024 & 5/4/2024

**ROBERT, J:-**

This ruling addresses an application for the execution of a decree sought by the applicant/Decree Holder, NMB Bank PLC, under Order XXI Rule 9 of the Civil Procedure Code, seeking the detention of the Respondent/Judgment Debtor, Mr. Jephtha Jeremia Machandaro, as a civil prisoner. The application arises from Taxation Cause No. 4 of 2020.

The application proceeded ex-parte against the Respondent/Judgment Debtor as he failed to enter appearance despite being duly served through a Newspaper of wider circulation in the country.

The learned counsel for the Applicant/Decree Holder, Dr. George Mwaiondola, submitted that the applicant seeks enforcement of an award

totaling TZS 2,800,000/=, as decreed in Taxation Cause No. 4 of 2020, dated 29/5/2020. Despite efforts to identify the respondent's properties for payment, the applicant has been unsuccessful. Consequently, the applicant prays for the respondent's detention as a civil prisoner.

Relevant to this application are Order XXI Rules 9, 20, 21, 35, 36, 38, and 39 of the Civil Procedure Code, which outline procedures for execution, notice before execution, arrest, and detention in prison.

Rule 9 of Order XXI mandates the applicant to apply for execution of the decree to the court which passed it. Rule 20 stipulates the issuance of a notice to the judgment debtor in certain circumstances, while Rule 21 outlines procedures upon issuance of such notice, including consideration of objections raised by the judgment debtor.

Regarding arrest and detention in prison, Rules 35 to 39 confer discretionary powers upon the court to permit judgment debtors to show cause against detention in prison and specify procedures upon their appearance or arrest.

Considering the submissions and the relevant provisions of the Civil Procedure Code, this court deliberates as follows:

The application for execution of the decree is based on the applicant's failure to obtain payment from the respondent despite the decree being in force. The applicant has pursued due diligence in attempting to locate the respondent's assets for payment but to no avail. Thus, the resort to detention as a civil prisoner is an avenue available to the applicant under the law.

The court notes the importance of ensuring that the judgment debtor is accorded fair treatment and an opportunity to be heard. Despite the respondent's failure to appear in response to the notice, this court has diligently considered the matter.

In accordance with Rule 35(1) of Order XXI, the court has the discretion to issue a notice calling upon the judgment debtor to appear and show cause why he should not be committed to prison. However, due to the respondent's failure to appear, the court, if so required by the decree-holder, may issue a warrant for the respondent's arrest.

The court acknowledges the financial implications of detention and the need to ensure the judgment debtor's subsistence during detention, as provided for in Rule 38.

Having considered the Applicant's submissions, the relevant legal provisions, and the circumstances of the case, the Court issues the following orders:


- (i) The application for execution of the decree is granted.
- (ii) The Respondent, Jephta Jeremia Machandaro, is hereby called upon to appear before this Court on a date to be specified in the notice, to show cause why he should not be committed to prison.
- (iii) In the event that the Respondent fails to appear in obedience to the notice, a warrant for his arrest shall be issued, and he shall be brought before the Court with all convenient speed, as per Rule 36 of Order XX1 of the CPC.

In conclusion, the application for execution of the decree is granted, and the Respondent is called upon to show cause why he should not be committed to prison. The Court emphasizes the importance of compliance

with its orders and the necessity for all parties to adhere to the procedural requirements outlined in the Civil Procedure Code.

It is so ordered.



  
K.N.ROBERT  
JUDGE  
5/4/2024

