IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL APPLICATION NO.14 OF 2009

BETWEEN

N.W. BUILDERS LIMITED .....PETITIONER

AND

MUNICIPAL DIRECTOR KINONDONI
MUNICIPAL COUNCIL ..... RESPONDENT

Date of final order: – 19/08/2011
Date of oral submissions – 16th & 19th of August 2011
Date of ruling – 24/10/2011

RULING

MAKARAMBA, J.:

This is a ruling on protest against the application the Applicant/Decree Holder filed in this Court on the 8th day of July 2011 for the execution of a decree of this Court dated 10th June 2011 issued against the Respondent in a Petition the Petitioner lodged in this Court to enforce the Final and Additional Award of the Arbitrator. The amount sought to be executed in the application comprise of **TZS 907.279.078.68** being the principal sum; **TZS 709,180,296.00** being interest at 23% from 19/11/2006 to 15/09/2008 and compound interest at 23% from 16/09/2008 to 30/06/2011, less **TZS 20,000,000/=** all in total amounting to **TZS 1,596,459,374.68.** The mode of execution sought is by way of

garnishee order to be issued against the Branch Manager, NMB Bank PLC, Magomeni Branch, garnisheeing the Respondent's Bank A/C Nos. 2051200002; 2051200005; 2051200007, 2051200008; 20512000009; 20512000010; 20512000013 maintained at that Branch.

On the 14th day of July 2011, this Court proceeding under Rule 22(1) of Order XXI of the Civil Procedure Code Cap.33 [R.E. 2002] saw cause not to issue its process of execution of the decree as applied. Instead this Court issued summons to the parties to appear before it for necessary directions. On the 27th day of July 2011, Mr. Mahenge, learned Counsel for the Respondent appeared before this Court and prayed for more time to go through the computation of the award to which prayer Mr. Mbwambo, learned Counsel for the Applicant did not object and this Court accordingly granted the prayer. On the 3rd day of August 2011, Mr. Mahenge appeared again before this Court and explained that they have discovered various errors in the application for execution particularly relating to the computation of the sum of the award sought to be executed by the Applicant/Decree Holder. Mr. Mahenge explained further that unfortunately they could not sit down together with the Applicant's side to sort out the errors in the computation and prayed for yet more time to go through the computation to which prayer, Mr. Mbwambo did not object and this Court accordingly granted the prayer. On the 16th day of August 2011, Mr. Mbwambo, learned Counsel for the Applicant/Decree Holder appeared before this Court and informed it that unfortunately the Respondent/Judgment debtor has yet to agree on the computation of the award done by the Applicant/Decree holder, neither have they came up

with their own computation apart from giving only a general figure to which the Applicant/decree holder was not agreeable. Mr. Mbwambo submitted further and prayed that since the Respondent/Judgment debtor has not suggested any payable amount to the Applicant/Decree holder, this Court should then be pleased to grant the application for execution. Mr. Mahenge, learned Counsel for the Respondent while conceding that they have not come to a consensus as to the amount of the award payable, however, he quickly submitted that the computation of the amount of the award payable by the Applicant/Decree holder is fraught with two major problems. The first problem relates to the question as to when the compound interest should commence and the second problem relates to as to how much of the award is subject to the compound interest of 23%. Mr. Mahenge prayed that since the parties have failed to come to a consensus on the computation of interest payable on the award, this Court should therefore direct how the computation should be done.

In his submission, Mr. Mahenge argued that the arbitrator awarded **TZS 210,154,078.68** to the Decree holder but he also awarded to the Kinondoni Municipal Council, **TZS 36,820,501/=** as well as **TZS 20,000,000/=** which Hon. Justice Werema of this Court had, in the initial stages of the matter, advised the Kinondoni Municipal Council to pay to the decree holder as advance, all of which come to **TZS 86,820,501**/=. Mr. Mahenge argued that this amount less the **TZS 210,154,078.68** the Arbitrator awarded to the award holder, brings the award the amount payable to **TZS 133,333,577**/= from which the compound interest of 23% should be computed. Mr. Mahenge submitted further that basing on

the order in the Judgment of this Court and the Award requiring the Kinondoni Muncipal Council to have settled the debt within one month from 16/09/2008, which ended on 14/10/2008 it is from this date the compound interest of 23% should commence up to this date. Mr. Mahenge submitted further that taking **TZS 133,333,577**/= as the basis for computing the compound interest of 23%, this brings a figure of **TZS 248,116.051/=,** which amount Mr. Mahenge claims that the Municipal Director has agreed to deposit in the account of the decree holder within one month from 13/08/2011. Mr. Mahenge submitted further that the Municipal Director however, has some concerns over the amount of **TZS 615,000,000/-** the Arbitrator awarded to the Decree holder, which amount Mr. Mahenge indicated that they are thinking of appealing against to the Court of Appeal of Tanzania. Mr. Mahenge proposed that while the parties continue debating on the amount of TZS 615,000,000/=, the mount of **TZS 248,116,051/=** which Mr. Mahenge informed this Court that they do not dispute should be deposited in the account of the judgment debtor.

On the appropriateness of garnisheeing the monies in the accounts of the Judgment Debtor held at the Bank, Mr. Mahenge submitted that a garnishee order being an order of attachment is as good as attaching government property which is contrary to the law prohibiting attachment of government properties or assets. In the case of a local government, the Municipal Director should have been notified to show cause why he should not pay the debt from his revenues within a period to be given by the court as per requirement of the law, Mr. Mahenge pointed out, which is stipulated in the 2006 Amendment to the Local Government (Urban

Authorities) Act, Cap.288 R.E. 2002. Mr. Mahenge however could not cite the said provision neither did he make available to this Court a copy of that law but promised to produce it in due course. Mr. Mahenge however did not keep his promise. Instead Mr. Mbwambo made available to this Court the said law.

Responding to the submissions of Mr. Mahenge on the computation of the compound interest, Mr. Mbwambo submitted that the application for execution is very clear on the computation of the interest and faulted the approach taken by the judgment debtor as to how much of the award should be charged interest. Mr. Mbwambo submitted further that the judgment debtor cannot make deductions from what was awarded to the decree holder by the Arbitrator before the judgment debtor pays the award sum. Mr. Mbwambo submitted further that the award that was given to the decree holder as per Item 7 & 8 of the Final Award at page 33, was without interest, unlike the Award to the decree holder as per Item 3 of page 33 of the Final Award which attracts interest. Mr. Mbwambo submitted further that with the findings of the Arbitrator, it is obvious that an Award to the decree holder will attract interest at 23%, which means that the deductions could only be made within one month as awarded by the Arbitrator. Since the judgment debtor did not pay the award sum within the specified time, the compound interest of 23% awarded by the Arbitrator in respect of Item 3 on the amount of **TZS 202,731,953.68** should remain. Mr. Mbwambo submitted further that the deductions should be made at the time of payment of the award sum along with the compound interest of 23% as awarded, the judgment debtor having failed

to honour it within the specified period. Mr. Mbwambo insisted that this is exactly what the decree holder has done in the application for execution. Mr. Mbwambo submitted further that even the amount of **TZS 20,000,000/=** the Judgment Debtor paid into this Court after filing the matter is also reflected in the computation in the application. The interest of 23% awarded on the award sum by the Arbitrator should be as per Arbitrator's Award and not as per the judgment debtor's approach, Mr. Mbwambo pointed out, and insisted that if there is any deposit on this amount it should include compound interest of 23% as from 14/10/2008 to this date, and any deductions would be made on the date of payment but not otherwise.

Responding to the submissions of Mr. Mahenge on the payment of **TZS 615,000,000/=,** Mr. Mbwambo submitted that this amount is not the decree holder's own making but contractual and is in compliance with the order of this Court dated 10/06/2011 on the issue of unit of measure applicable on the BOQ in respect of Item 6.20 as claimed by the decree holder to the Project Manager. Mr. Mbwambo pointed out that the nature of the dispute before this Court now is founded on the differences that arose regarding the interpretation of the unit of measure applicable on the BOQ Item 6.20 carefully fixing overhead conductors along erected poles. Mr. Mbwambo submitted further that after the contractor, the decree holder had fixed overhead conductors, the length of 4100 metres, a claim was raised for **TZS 615,000,000/=** which is equal to 4100 x 150,000/= being the rate agreed in the Contract (BOQ). The Project Manager refused to certify this amount but only certified **TZS 15,000,000/=** and directed

that the rest shall be settled in the final Certificate. This also became a subject of a dispute which the decree holder referred to an adjudicator as per the Contract, Mr. Mbwambo pointed out. After the dispute has been determined in favour of the decree holder by this Court, the claim of **TZS 615,000,000/=** as presented before the Project Manager should now be paid, which proposition also finds support in Article 42.2 of the Contract, Mr. Mbwambo insisted. That amount has now been computed and the computation of interest in respect of that amount is correct and justified under the Contract, Mr. Mbwambo surmised. The order of this Court of 10/06/2011 is not challenged on appeal or in any other and therefore the application for execution be allowed as presented, Mr. Mbwambo prayed.

I have noted that on the case record there is a Notice of Appeal to the Court of Appeal of Tanzania which was filed in this Court on the 23rd day of June 2011 indicating the intention of the judgment debtor of appealing to the Court of Appeal of Tanzania against part of the decision of this Court as it relates to the principles of assessment of the Award by the Arbitrator. However, there are has been no further steps which the Respondent/Judgment Debtor has taken to institute the intended appeal. In terms of Rule 90(1) of the Tanzania Court of Appeal Rules, 2009, "*an appeal **shall** be instituted by lodging in the appropriate registry, within sixty (60) days of the date when the notice of appeal was lodged.*" In terms of Rule 91 of the Tanzania Court of Appeal Rules, 2009, if a party who has lodged a notice of appeal fails to institute an appeal within the appointed time, he "***shall be deemed to have withdrawn his notice of appeal.***" Counting from the date the judgment debtor lodged his Notice of

Appeal in this Court, the 23.06.2011 to this date, the 24.10.2011 it comes to one hundred and twenty (120) days, which is far beyond the stipulated period of 60 days of instituting the intended appeal. Since this Court has not been informed by the judgment debtor whether there has been any steps taken by the judgment debtor to institute the intended appeal, and given that there is nothing on record in that regard, then in terms of Rule 91 of the Tanzania Court of Appeal Rules, 2009, the judgment debtor is "*deemed to have withdrawn the notice of appeal.*"

On the submission by Mr. Mahenge that the law prohibits attachment of Local Government properties, Mr. Mbwambo submitted that although he has not seen that law, to his knowledge there is a law which prohibits attachment of Government property but not that of Local Government Authorities. In the wisdom of this Court, the learned Counsel for the parties were granted leave to prepare and come to address this Court on the said law. Mr. Mahenge argued that that law prohibits the properties of Local Government Authorities from being attached by a court order. The learned Counsel for the parties came and addressed this Court on the said law and I am grateful to them since this has immensely assisted this Court in making its deliberation on this matter.

Mr. Mahenge submitted that going through section 22 of the ***Local Government Laws (Miscellaneous Amendment) Act No.13/2006,*** which amends section 109A of the ***Local Government (Urban Authorities) Act, 1982*** (the Principal Act) by adding immediately thereat after section 109A section 109B, it prohibits execution or attachment or process of court decree or order against the property of the Council except

that the Urban Council Director is "***to cause to pay the person entitled to the amount awarded by the judgment or order out of the revenue of the Council.***" Amplifying further on this point, Mr. Mahenge submitted that in terms of section 5(2)(a) of the ***Local Government Authorities Finance Act,*** properties of local government means and includes *all accounts, movable and immovable properties*. Mr. Mahenge submitted further that in so far as the law prohibits the attachment of properties of local government authorities, and garnishee order being one such mode of attachment, the prayer by the Applicant for attachment by garnishee order of the monies of the Council held at the Bank should therefore not be granted by this Court. Mr. Mahenge surmised that this Court may direct the Municipal Director to cause to be paid the award sum from the revenue of the Council as required by law.

Responding, Mr. Mbwambo submitted that the application before this Court intends to cause the Municipal Director to pay the amount of the award as per the order of this Court and the Arbitrator's Award, which is why this Court has ordered the Municipal Director to appear before it as per the notice of direction issued by this Court on 14/07/2011, which is the most this Court could do in the circumstances. Mr. Mbwambo submitted further that where the Municipal Director has failed to cause the payment, this Court cannot be precluded from proceeding with the execution process according to the Civil Procedure Code. Mr. Mbwambo submitted further that what this Court has done is in compliance with the said Amendment and since the Municipal Director has failed to cause the payment from the revenues of the Council then the garnishee order has to issue.

I have carefully followed the submissions and rival by Counsel for the parties. Clearly, the parties are at issue with respect to two issues, namely *when the compound interest of 23% should commence and how much of the Award is subject to that interest; and secondly whether property of Local Government is subject to attachment by a court decree and whether money in the bank is property of the local government.*

The decree, the subject of contestation in the present application, is for execution. In terms of section 38(1) of the Civil Procedure Code, it is stipulated that:

> *"38(1) **All questions arising between the parties to the suit in which the decree was passed**, or their representative, and **relating to the execution**, discharge or satisfaction of the decree, **shall be determined by the court executing the decree and not by a separate suit."** (the emphasis is of this Court).*

The parties having failed to come to a consensus, first on the amount of the award which is subject to the computation of 23% interest; the period for reckoning that interest; and whether at all the properties of the judgment debtor including money in the bank is subject to garnishee order, this Court allowed the Counsel for the parties to address it on these questions which arise between the parties relating to the execution, which this Court, which is the executing court, is enjoined by law to determine but not as a separate suit. The decree holder has come up with a proposal as to the award sum payable which the judgment debtor has faulted but could not come up with his own. The main bone of contention in this

application in so far as the computation of the interest on the award sum by the decree holder is that it is essentially problematic in respect of when the compound interest of 23% should commence and how much of the arbitral award sum is to be subjected to that interest.

In the present application, the applicant/decree holder seeks to execute **TZS 907.279.078.68** comprising the principal sum; **TZS 709,180,296.00** being interest at 23% as from 19/11/2006 to 15/09/2008 and compound interest at 23% as from 16/09/2008 to 30/06/2011, less **TZS 20,000,000/=** all totaling **TZS 1,596,459,374.68.** According to Mr. Mahenge, the Arbitrator not only awarded the decree holder **TZS 210,154,078.68** but also awarded the judgment debtor, the Kinondoni Municipal Council, **TZS 36,820,501/=.** Mr. Maheng submitted also that the amount of TZS **20,000,000/=** the Kinondoni Municipal Council was ordered by this Court (per Werema, J.) to pay the decree holder as advance, plus the amount of TZS 36,820,501 this brings the amount to a total of **TZS 86,820,501**/=, which amount after deducting from the **TZS 210,154,078.68,** the Arbitrator awarded to the decree holder, brings it to **TZS 133,333,577**/=, which is the amount to be used as the basis for computing the compound interest of 23% awarded by the Arbitrator. Mr. Mbwambo does not agree with this computation as proposed by Mr. Mahenge for the simple reason that the Award to the decree holder attracts interest at 23%, and so the deduction could only be made within one month as awarded by the Arbitrator, and that since the judgment debtor has failed to pay the award sum within the specified time of one month, the compound interest of 23% awarded by the Arbitrator in

respect of Item 3 on the **TZS 202,731,953.68** should therefore remain. The issue is whether deduction should be made at the time of payment of the award sum along with the compound interest of 23% awarded or before payment. The decree holder claims to have made his computation by deducting the amount already paid at the time of payment which also reflects even the **TZS 20,000,000/=** earlier paid into this Court by the judgment debtor. The other controversy is which amount is subject to the compound interest of 23%. According to the decree holder, in respect of Item 3, the Arbitrator awarded **TZS 202,731,953.68, (**curiously this amount falls slightly short of the figure of **TZS 210,154,078.68** as per Mr. Mahenge) from which Mr. Mahenge has deducted **TZS 86,820,501**/= and came up with a base amount of **TZS 133,333,577**/= for calculating the compound interest. If we go by the amount of **TZS 202,731,953.68** proposed by Mr. Mbwambo and deduct the amount of **TZS 86,820,501/-** comprising of **TZS 36,820,501/=** the amount Mr. Mahenge claims that the Arbitrator awarded the judgment debtor plus the **TZS 20,000,000/=** the Kinondoni Municipal Council was ordered by this Court (per Werema, J.) to pay the decree holder as advance, this will bring the base amount of **TZS 116,111,452/=** for calculating the compound interest of 23%. It is not far to see the problems fraught with taking the approach proposed by Mr. Mahenge for computing the award sum by deducting **TZS 86,820,501/=,** that is, **TZS 36,820,501/=** the Arbitrator awarded to the Kinondoni Municipal Council plus the **TZS 20,000,000/=** the Kinondoni Municipal Council paid to the decree holder as advance when the matter was filed in court. It is not entirely clear to this Court why Mr.

Mahenge elected to include the amount of **TZS 36,820,501/-** that he claims that the Arbitrator awarded to the Kinondoni Municipal Council in computing the amount to be paid by the judgment debtor to the decree holder. The present application for execution is for the enforcement by the decree holder of the award sum awarded to it by the Arbitrator, which in my view should not include the amount of **TZS 36,820,501/=** that Mr. Mahenge claims the Arbitrator awarded to the judgment debtor. As rightly submitted by Mr. Mbwambo, which position also finds support by Mr. Mahenge, the amount of **TZS 20,000,000**/= ordered by this Court to be paid in advance by the Kinondoni Municipal Council to the decree holder before the matter was filed in court, forms part of the arbitral award sum, only that it was paid into court in advance and therefore forms the basis for calculating the compound interest. The amount of **TZS 20,000,000/=** should as rightly argued by Mr. Mbwambo should therefore be deducted from the award sum at the stage of execution of the award decree and not otherwise. Logically, since the amount of **TZS 20,000,000/=** was paid in advance by the judgment debtor to the decree holder as security, it means that now that the dispute has been determined in favour of the decree holder, the amount of **TZS 20,000,000/=** should now form part of the award sum and therefore part of the amount to be subjected to the calculation of the compound interest of 23%.

As to the amount of **TZS 615,000,000/-,** I am at one with the submissions by Mr. Mbwambo that this amount is not the decree holder's own making but is contractual. As rightly submitted by Mr. Mbwambo, the amount of **TZS 615,000,000/-** is in compliance with the order of this

Court of 10/06/2011 on the issue of the unit of measure applicable on the BOQ in respect of Item 6.20 which forms the basis of the dispute both before the adjudicator and the arbitrator and was finally resolved by this Court. In the circumstances the judgment debtor cannot be heard at this stage to contest that amount. Doing so in my view amounts to asking this Court to go over the merits of its own decision.

Let me now turn to consider the controversy surrounding the issue whether this Court can issue a garnishee order against property of the Municipal Council to wit, money in the Bank held in the name of the Kinondoni Municipal Council. The argument by Mr. Mahenge is that a garnishee order being an order of attachment is as good as an order attaching government property which includes property of a local government authority, which is contrary to the law. Instead, Mr. Mahenge further argued, the Municipal Director of the Kinondoni Municipal Council should be asked to show cause why he should not pay the award sum from the revenues of the Municipal Council within a period to be specified by this Court. Central to the argument by Mr. Mahenge is the provisions of section 22 of the *Local Government Laws (Miscellaneous Amendments) Act No.13 of 2006* amending *the Local Government (Urban Authorities) Act Cap.288 [R.E. 2002]* (the Principal Act) by adding immediately after section 109A section 109B to the following effect:

> *"109B. Where any decree or order is granted or obtained against the Urban Council, no execution or attachment or process of that nature shall be issued against the property of the Council,* ***except that the Urban Council Director shall cause to be paid out of the revenue of the Council such amount as may by judgment, or***

order be awarded against the Council to the person entitled to it. *" (the emphasis is of this Court)*

The above quoted provision of the law in my view, puts a bar on execution or attachment or process of any decree or order granted or obtained against the Urban Council against the property of the Council. The law goes further and enjoins the Council Director "***to cause***" the amount of the judgment or order awarded against the Council, "***to be paid to the person entitled to it out of the revenue of the Council.***"

The argument by Mr. Mbwambo in the alternative is that the money the garnishee order is sought to enforce is not part of the properties or assets mentioned in section 22 of the Amendment Act No.13 of 2006, which amended section 109A of the Principal Act. Mr. Mbwambo argued further that the money to be garnisheed is in the Bank as specified in the application, and money in the bank is not property of the depositor but of the Bank. Mr. Mbwambo supported this point by citing to this Court the decision of Justice Lugakingira (as he then was) in **SELEMANI TILWILIZAYO v REPUBLIC 1983 TLR 402 (HC),** wherein the English case of **FOLEY VS HILL (1848) (2) H.L. 28** and **JOACHMSON V. SWISS BANK CORPORATION (1922) All E.R. 92** and also **RWEBANGIRA V. R. [1975] LRT No.26** were cited with approval as well as reference in ***SHELDON'S THE PRACTICE AND KAW OF BANKING*** 9th Edition at page 201. In his decision in **SELEMANI TILWILIZAYO v REPUBLIC 1983 TLR 402 (HC), (supra)** His Lordship Lugakingira (as he then was) held that customers of the bank including the Bank itself do not own money deposited in the Bank. Mr. Mbwambo argued

further that Lord Cottenham in the English case of **JOACHMSON V. SWISS BANK CORPORATION (1922) All E.R. 92** cited in **SELEMANI TILWILIZAYO v REPUBLIC 1983 TLR 402 (HC), (supra)**, stated that "***money when paid to a bank ceases all together to be money of the principal and therefore it is money of the Bank.***" Mr. Mbwambo submitted further that on the basis of these authorities, the money sought to be attached by the garnishee order does not fall among the properties or assets envisaged for protection under section 22 of the Amendment Act, which in the present matter is inapplicable. Mr. Mbwambo submitted further that this Court in a recent order dated 04/03/2010 in **Misc. Commercial Case No.65 of 2009** issued garnishee order against another Municipal Council in **AW INVESTMENT COMPANY VS ILALA MUNICIPAL COUNCIL**, which order was made almost five years after the said amendment. Mr. Mbwambo submitted further that he believes that garnishee proceedings is the only way to cause the Municipal Director to pay the decretal sum, which is why the decree holder has elected to proceed by way of garnishee order instead of attaching the property of the Municipal Council. The Amendment cited by Mr. Mahenge is inapplicable in the present matter, Mr. Mbwambo surmised and prayed that this Court be pleased to issue garnishee order against the Kinondoni Municipal Council as prayed in the application.

In reply Mr. Mahenge submitted that the argument by Mr. Mbwambo that section 22 of the Amendment Act does not allow for attachment of the properties of Municipal Council is a misconstruction of that provision. The money in the bank is property of the Municipal Council inseparable from

government property Mr. Mahenge insisted, and submitted further that the wording of section 22 of the Amendment Act covers both immovable and movable property. Distinguishing the case of **SELEMANI TILWILIZAYO v REPUBLIC 1983 TLR 402 (HC),** cited by Mr. Mbwambo in his submissions, Mr. Mahenge further argued that that case was a criminal case while the present case is civil in nature and the property involved includes money in the bank. The recent case of this Court in **Misc. Commercial Case No.65 of 2009 AW INVESTMENT COMPANY VS ILALA MUNICIPAL COUNCIL** where a garnishee order was issued by this Court against the Ilala Municipal Council was done with an oversight of clear provision of the law, Mr. Mahenge surmised, and prayed that this Court dispense with issuing the garnishee order against local government authorities. Mr. Mahenge faulted Mr. Mbwambo in his argument that what this Court is being asked for in the present application is to order the judgment debtor to pay the award sum since the judgment debtor has yet to be so ordered by this Court to pay the decree holder.

In the present application what the applicant seeks is execution by way of garnishee order so as to have the monies held at the Bank by the judgment debtor, the Kinondoni Municipal Council, to be paid to the decree holder in fulfillment of the sums in the arbitral award as decreed by this Court. It is without much controversy therefore and as rightly submitted by Mr. Mahenge, that a garnishee order is an order of attachment. The controversy however, is with respect to whether money in the various accounts of the judgment debtor held at the Bank and which are sought to be attached by the said garnishee order is property of the Kinondoni

Municipal Council and hence liable to protection from attachment and execution as envisaged and subject to the procedure stipulated by section 22 of the *Local Government Laws (Miscellaneous Amendments) Act No.13 of 2006* amending *the Local Government (Urban Authorities) Act Cap.288 [R.E. 2002].* The said provision as I intimated to earlier puts a bar on execution or attachment or process of any decree or order granted or obtained against the Urban Council against the property of the Council and enjoins the Council Director "***to cause***" the amount of the judgment or order awarded against the Council, "***to be paid to the person entitled to it out of the revenue of the Council.***"

I am at one with Mr. Mbwambo on the general principle governing banking matters that money held at the Bank for customers/depositors is not the property of the customers/depositor but of the Bank. This principle which was succinctly restated by Lugakingira, J. (as he then was) in **SELEMANI TILWILIZAYO v REPUBLIC 1983 TLR 402 (HC),** and some English authorities cited therein, with due respect to Mr. Mahenge, is relevant to the present case since it applies generally whenever an issue relating to Bank-customer relationship arises, be it in a criminal or civil matter. This principle in my view, does not therefore change when the case under consideration is civil in nature as is the case presently. It is not surprising therefore that even in the case of **SELEMANI TILWILIZAYO v REPUBLIC 1983 TLR 402 (HC),** a criminal case, His Lordship Lugakingira cited a number of famous English cases on civil matters including that of **FOLEY V HILL C (1848), 2 H.L. Cas. 28,** where Lord Cottenham, L.C. stated in no uncertain terms that:

"Money, when paid into a bank, ceases altogether to be the money of the principal; it is then the money of the banker who is bound to return an equivalent by paying a similar sum to that deposited with him when he is asked for it."

The government and local government authorities for that matter like any other customer of the Bank once has deposited money in the bank that money ceases to be owned by the depositor and becomes the property of the Bank. This in my view, does not however, prevent the depositor from asking the Bank to return an equivalent by paying a similar sum to that deposited with the banker. This becomes even more evident by the requirement under section 22 of the amending law to the effect that "***to cause***" the amount of the judgment or order awarded against the Council "***to be paid to the person entitled to it out of the revenue of the Council.***" According to ***Black's Law Dictionary*** Eighth ed ition(2004) at page 1344, the term "***revenue***" means "***gross income or receipts***" and "***general revenue***" means "***the income stream from which a state or municipality pays its obligations unless a law calls for payment from a special fund.***" In my considered opinion, the revenue of the Kinondoni Municipal Council would therefore constitute "*all income it receives from various charges and taxes*" and this will also comprise of the money deposited with the bank by the Kinondoni Municipal Council which it can access anytime for use in meeting its various obligations including that of paying entitled persons by way of judgment and court orders and/decrees, as is the case presently. It is for this reasons that this Court finds that much as the monies held at the Bank by the Kinondoni Municipal

Council in the various accounts maintained and operated by the Kinondoni Municipal Council ceases to be the property of the Council, this does not in any way prevent the Kinondoni Municipal Council from causing the amount of the judgment or order awarded against the Council in the present arbitral award from being ***"paid to the decree holder out of the revenue of the Council",*** which as I alluded to earlier, includes monies held in the accounts at the Bank and operated by the Kinondoni Municipal Council. In the circumstances, this Court is satisfied that the money sought to be garnisheed in the present application for execution constitutes income of the Council in the various accounts maintained and operated by the Council at the Bank. This money however, cannot be a subject of attachment by a garnishee order in terms of section 22 of the *Local Government Laws (Miscellaneous Amendments) Act No.13 of 2006* amending *the Local Government (Urban Authorities) Act Cap.288 [R.E. 2002].* I am at one with Mr. Mahenge that the case of **Misc. Commercial Case No.65 of 2009 AW INVESTMENT COMPANY VS ILALA MUNICIPAL COUNCIL** cited by Mr. Mbwambo where a garnishee order was issued by this Court against the Ilala Municipal Council was an oversight on the part of this Court. In that case, this Court did not have the opportunity to consider the said provisions of the law. It was not brought to its attention and no submissions were made by the parties on the said provision and therefore this Court did not base its decision on the said provision of the law. In any event this Court is not bound by that decision which is a decision of a court of parallel jurisdiction. Furthermore, that

decision was made in forgetfulness or ignorance of an existing provision of the law, which rather unfortunately was not brought to its attention.

In the upshot and for the foregoing reasons, the resistance put by the judgment debtor on the mode of the execution of the arbitral award by way of garnishee order succeeds.

The Municipal Director of the Kinondoni Municipal Council is hereby ordered to pay the decree holder the arbitral award sum from the revenue of the Council.

The Applicant/decree holder shall lodge in this Court an amended application for execution reflecting the decision of this Court with respect to the mode of execution of the arbitral award sum within seven days of this Order.

The circumstances of this matter are such that I shall make no order as to costs. Each party shall bear its own costs in this contest. Order accordingly.

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R.V. MAKARAMBA
JUDGE
24/10/2011

Ruling delivered this 24th day of October, 2011 in the presence of Mr. Mwambo, Advocate for the Petitioner and Mr. Mahenge, for the Respondent.

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R.V. MAKARAMBA
JUDGE
24/10/2011

Words count: 5,874