

IN THE HIGH COURT OF TANZANIA  
COMERCIAL DIVISION  
AT MWANZA

COMMERCIAL CASE NO.6 OF 2011

ISAYA BUKAKIYE T/A ISAYA AGROVET -----PLAINTIFF/JUDGMENT CREDITOR  
VERSUS  
DICKSON MUSULA ]  
GRACE JAMES MUSULA ] -----DEFENDANTS/JUDGMENT DEBTORS

RULING

SONGORO, J

On the 11/12/2014, Isaya Bukakiye t/a Isaya Agrovet filed an application for execution of Court Decree which is between Isaya Bukakiye t/a Isaya Agrovet, Judgment Creditors and Dickson Musula and Grace James Musula, Judgment Debtors.

The application is made under Order XXI, Rule 10 of the Civil Procedure Code Cap.33 [R.E.2002] and the Judgment Creditor claim for payment as follows; principal sum Tshs.4,800,000/=, interest at 7% which is Tshs.336,000/=, Costs of the suit Tshs.4,426,000/= and in total the claim stands at Tshs.9, 562,000/=.

In support of his application, the Applicant has annexed a copy of the Court Decree dated and extracted on the 28/4/2011.

On the mode of execution of the Court Decree, the Applicant it prays for the orders of attachment and sale of the Judgment Debtors two motor vehicles T.399 AFC Toyota Land Cruiser, and T963 BBK Mitsubishi Canter.

At the hearing of the application, Mr. Justades Angelo, the Learned Advocate of the Judgment Creditor informed the court that they have failed to serve the Judgment Debtor

with the copy of the application because, has shifted from his place of residence, closed his business and cannot be traced. To support his assertion that the two Defendants have disappeared, he furnished to the Court Summon issued by Registrar on the 13/1/2015, which were returned unserved.

He also furnished the court with an affidavit of process server one *Silas Lucas Isangu* stating that *Dickson Musula, Grace James Musula t/a MMEA NA MIFUGO SERVICE AND GENERAL SUPPLIES "hapatinakani"* meaning defendants cannot be traced and served.

The Counsel for Judgment Creditor requested the court to take into account that the application for execution was filed one year ago, the fact that pursuant to Order 21, Judgment Debtors have no right of appearance or to defend themselves and entertain the application and grant it.

On the attachment and sale two motor vehicles with Registration No. T 399 AFC Toyota Land Cruiser and T963 BBK Mitsubishi Canter, the Counsel of the Judgment Creditor informed the court that the Judgment Creditor has made his own survey and inquiry to Tanzania Revenue Authority (TRA) and realised that the two motor vehicles belongs to the Judgment Debtor. He then prayed to the court, to make an order of attachment, and sale of the two motor vehicles immediately.

The court has considered the Applicant's application for execution of the court decree, the mode of execution of attachment and selling two motor vehicles which the Judgment Creditor seeks, and find there is no conclusive proof if the said motor vehicles belong, and are in possession of the Judgment Debtors.

In his brief statement to this Court, the Counsel for Judgment Creditor indicated that, there was a survey and

inquiry on ownership of the above-mentioned two motor vehicle, but the report of the survey, and inquiry done by the Judgment Creditor was not annexed to the application or exhibited by Court.

Under Order XX1 Rule 15 of the Civil Procedure Code, Cap 33 R.E 2002, the Court before granting an application for execution and sanction mode of execution, the court has a duty of satisfying itself on the correctness and mode of execution of the Court Decree. Indeed Order XX1 Rule 15 insist that;

*On receiving an application for the execution of a decree as provided by rule 10, sub-rule (2), the court shall ascertain whether such of the requirements or rules 10 to 12 as may be applicable to the case have been complied with; and, if they have not been complied with, the court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.*

And Rule 11 of Order XX1 of the Civil Procedure Code Cap 33 cited above states that

*Where an application is made for the attachment of any movable property belonging to a judgment debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.*

Now reading from the wording of Rule 11 of Order XX1 cited above, and the inference which may be drawn from the said order, it is obvious movable property due sale must be the property which belongs the Judgment Debtor. The words and phrase *any movable property which belongs to a judgment debtor* clearly requires the Judgment Creditor and even this court to assure itself that the property to be attached for sale belongs to the Judgement Debtor. In other words, there must be evidence to that effect.

Thus, in view of what is provided under Rule 11 of Order XX1 of the Civil Procedure Code, [Cap.33 R.E 2002] which governs attachment and sale of movable property it is absolutely necessary that the movable property to be attached to be the property of the Judgment Debtor.

Taking into account that, so far the court has no conclusive proof if two motor vehicles with Registration No T 399 AFC Toyota Land Cruiser and T963 BBK Mitsubishi Canter mentioned on the application for execution belonged to Judgment Debtors. There is need to have such proof, such proof may include registration card of motor vehicle or any relevant document which may convince the court.

In respect of the Applicant's application, quite frankly, I find the application for execution did not comply with Rule 11 of Order XX1 of the Civil Procedure Code Cap.33 R.E 2002 which requires a proof that, the intended movable property to be attached belong to Judgment Debtors.

It is my view that, spirit, and rationale of Rule 11 of Order XX1 of the Civil Procedure Code, is to do away with risks, and danger of attaching properties which do not belong to Judgment Debtors.

For reason explained above, I decline, to grant the application for execution. Judgment Creditor is at liberty to file another application which complies with the requirement of law.

I make no order as to costs.

Dated at Mwanza this 12<sup>th</sup> day of February, 2015

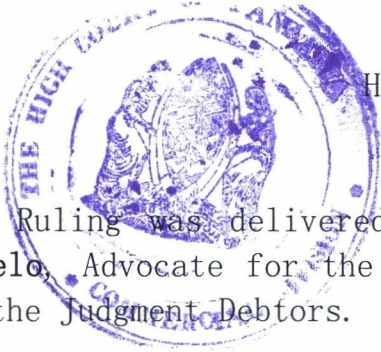


H. T. SONGORO  
JUDGE

Delivered at Mwanza on the 12<sup>th</sup> day of February, 2015



H. T. SONGORO  
JUDGE



The Ruling was delivered in the presence of **Mr. Justades Angelo**, Advocate for the Decree Holder and in the absence of the Judgment Debtors.