

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR-ES-SALAAM.
COMMERCIAL CASE NO. 94 OF 2015**

**PRINCESS SHABAHA
COMPANY LTD PLAINTIFF/DECREE HOLDER**

VERSUS

**NIC BANK TANZANIA
LIMITED DEFENDANT/JUDGMENT DEBTOR**

RULING

Mruma, J.

The decree holder Princes Shabaha Company Limited have filed an application for execution of a decree by arrest and sending to prison as a civil prisoner of Mr. Pankaj Kansara the Managing Director of Nic Bank Tanzania Limited, the Judgment Debtor is Commercial Case No. 94 of 2015. In the case the Judgment Debtor was adjudged to pay the Decree Holder Tshs. 324,000,000/= as specific damages for loss of business resulting from unlawful impounding of the vehicles belonging to the Decree Holder. The Judgment Debtor was also ordered to release the impounded vehicles and give them to the Decree Holder. It is upon failure by the Judgment Debtor to pay the decretal sum that the Decree Holder has applied for execution of the said decree.

Arrest and detention in prison is one of the modes of execution of a decree prescribed by the law **under Section 42 (c) and Rule 28 of**

Order XXI of the Civil Procedure Code [Cap 33 RE 2002] Section 42

(c) of the said law provides:

"Subject to such conditions and limitations as may be prescribed, the court may on the application of the decree holder, order execution of the decree by arrest and detention in prison.

And **Rule 28 of Order XXI of the Civil Procedural Code** says:

"Every decree for payment of money including a decree for payment of money as alternative to some other relief, may be executed by detention as a civil prisoner of the judgment debtor or by attachment and sale of his property or by both"

Mr. Msemwa, counsel for the Managing Director of the Judgment Debtor's Bank, Mr. Pankaj Kansara does not disputed the mode of execution chosen by the Decree Holder but his main concern is that there is a notice of appeal lodged by the Judgment Debtor and therefore executing the decree may be prejudicial to the Judgment Debtor's rights on appeal. According to Mr. Msemwa apart from a notice of appeal the Judgment debtor has lodged in the court of Appeal and application for extension of time within which to file an application for stay of execution of the present decree.

Responding to Mr. Msemwa's submissions Mr. Malamsha, Counsel for the Decree Holder contended that a notice of appeal doesn't act as an

automatic stay of execution. He said that the Judgment debtor had ample time to apply for stay of execution of the decree but out of conceit or arrogance she did not do so therefore she shouldn't be heard in her attempt to stop the Decree Holder from enjoying the fruits of her decree.

Sub-rule (1) of Rule 5 of Order XXXIX of the Civil Procedure Code provides that:

"An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the court may order nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree but the court may for sufficient cause shown order the stay of execution of such decree"

In the present case admittedly there is no appeal which is pending before the Court of Appeal and there is no application for stay of execution of a decree which is pending before that court. The only proceeding which is said to be pending in the Court of Appeal is an application for extension of time within which to file an application for stay of execution. This is, in my opinion far fetched.

In my view the pendency of an application for extension of time within which the judgment debtor can lodge an application for stay of execution, cannot on its own operates as a stay of execution. The Judgment Debtor must show good cause as to why the application for execution should not be granted. In the present case no such good cause

has been shown. The pendency of an application in the Court of Appeal or even before the trial court can only act as a caution to the officer who carries out the execution of the decree (normally the Deputy Registrar) not to carry out the execution to the extent that may interfere and prejudice the proceedings pending in the higher court or in the same court but for sure the Decree Holder (just like the Judgment debtor who has the right of appeal etc), has the right to commence the execution proceedings for instance to identify the properties of the Judgment Debtor which are liable for attachment and sale and probably the court broker who will carry out the order. In a case like this where the mode of execution chosen is by arrest and sending to prison of the Judgment Debtor's Director, it is just convenient that the person sought to be arrested is identified and the order for his arrest is in place. In the event the intended appeal or application is decided in Appellant's favour, the order for arrest of the judgment debtor or any person liable for arrest will die a natural death. However, in the event the appeal or any other pending proceedings are unsuccessfully, then the order will be carried out unless he sooner pays the decretal sum. This procedure will assist the Decree Holder and the Court to avoid multiple applications for execution of a decree regardless the result of the intended appeal.

Accordingly I find that the judgment debtor has failed to show cause as to why execution should not proceed as prayed. In the circumstances I grant the application as prayed. However, as the Judgment debtor has commenced appeal processes I direct that the officer endorsing the

execution processes (i.e. the Deputy Registrar), should exercise utmost care so that the execution of this decree should not in any way interfere with or prejudice the Appeal processes. In other words, what I am saying is that the prayer to have Mr. Pankaj Kansara, the Managing Director of NIC Bank Tanzania Limited, be sent to prison is granted unless the judgment debtor sooner pays the decretal sum plus costs and interests as ordered. However, as the Appeal Processes have been commenced, the endorsement or carrying out of final stages of this order (sending Mr. Pankaj Kansara to prison) should await the result of the intended appeal. In the event the appeal succeeds, this order will die a natural death, however, in the event the appeal fails, the order of sending Mr. Pankaj Kansara to prison as a civil prison shall be executed without much ado. The Decree Holder shall not have to apply for execution of the decree but she shall apply for carrying out of the order of sending the said Pankaj Kansara to prison as a civil prisoner.

Order accordingly



A. R. Mruma

JUDGE

13/2/2017