

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 46 OF 2017**

**GOSBERT STANSLAUS MUTAGAYWA..... PLAINTIFF**

**VERSUS**

**HAMIS SHABANI KAMBA..... 1<sup>ST</sup> DEFENDANT**

**MICHELLE AJAMA MAKINDU ..... 2<sup>ND</sup> DEFENDANT**

**TRENDS (T) LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING:**

**MRUMA, J:**

This is an application for execution of a decree for payment of money. The Judgment debtors were adjudged by this court to pay to the decree holders Tshs 156,000,000/= by installments as stated in their consent decree. The decree was passed on 20<sup>th</sup> July 2017. To date about Tshs 40,000,000/= and in any event not exceeding Tshs 55,000,000/= only has been paid.

The Judgment debtors are saying that their inability to pay is due to economic hardships and financial doldrums which they are facing currently.

In other words they are pleading economic hardship as the reason for their failure to satisfy the decree.

Under Rule 39 (1) of Order XXI of the CPC, there are two grounds which can rescue the Judgment debtor from being committed to prison as a civil prisoner for failure to satisfy the decree. The first ground is poverty. Poverty is inability of a person to satisfy his basic needs due to lack of money or skill. Poverty can be established by filing an application to be declared insolvent or bankrupt as the case may be.

In the present case there is no indication that the Judgment debtors are unable to pay because of poverty.

The second ground is "any sufficient cause". On this ground the Decree holder have stated that they had other debts which they had to clear too. I find this not to be sufficient cause within the ambit of Rule 39 (1) of Order XXI. The preference given by the Judgment debtors to other Creditors were not justifiable. I say so because Whereas the Decree holder has possession of documents of ownership of the Judgment debtors properties – including a farm at Goba area in Dar-es-Salaam and a Mercedes Benz car, the Judgment debtors proceeded to the "allegedly" dispose of the properties without fully involving the Decree holder.

That said, I find that the Judgment debtors have failed to show sufficient cause as to why they should not be sent to prison as civil prisoners for failure to satisfy the decree of this court dated 20<sup>th</sup> July 2017.

I order that unless they sooner pay the balance of the decretal sum Hamis Shaban Kamba and Michelle Ajema Makindu shall be committed to civil prison as civil prisoners for the period of six (6) months.

In terms of Rule 38 (2) of Order XXI of the Civil Procedure Code the decree holder is ordered to pay Tshs 300,000/= per month each Judgment debtor as his/her monthly subsistence allowance. This amount shall be payable to prison officer in charge two days before the commencing of every month of their stay in prison.

In terms of Section 44 (2) of the Civil Procedure Code, the Judgment debtors are hereby informed that they have the right to apply to be declared insolvent, and that they will be discharged if they have not committed any act of bad faith regarding the subject of the application, and if they complies with the provisions of the law of insolvency.

If the Judgment debtors are willing to apply to be declared insolvent, this court may release them upon furnishing security to the satisfaction of this court that they will appear when called upon in any proceedings.

Order accordingly.



A. R. Mruma

Judge

30/5/2018

**Mr. Alfonce (Advocate for the Judgment debtors after consultations with his client):**

The Judgment debtor is not intending to apply to be declared insolvent.

**2<sup>nd</sup> Judgment debtor:**

I do not intend to apply to be declared insolvent.

**Court :**

The Judgment debtors have no intention to make application to be declared insolvents.



A. R. Mruma

Judge

30/5/2018