

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT MWANZA

COMMERCIAL CASE NO. 14 OF 2015

I & M BANK (T) LTD.....PLAINTIFF/DECREE HOLDER

Versus

EMMANUEL JUSTINE NYERERE

t/a MAFUTA DISTRIBUTORS...1st DEFENDANT/JUDGMENT DEBTOR

REVINA JOSEPH MHONGE.....2nd DEFENDANT/JUDGMENT DEBTOR

Last Order: 10th Aug, 2020

Date of Ruling: 13th Aug, 2020

RULING

FIKIRINI, J.

This is an application for execution of a decree in Commercial Case No. 14 of 2015, which was instituted by the plaintiff now decree holder, I & M Bank (T) Ltd, subsequent to the Court's judgment and decree delivered in her favour on 15th February, 2019, against the defendants now judgment debtors: Mr. Emmanuel Justine Nyerere t/a Mafuta Distributors as the 1st judgment debtor and Ms. Ravina Joseph Mhonge as the 2nd judgment debtor.

The application for execution was filed on 24th July, 2019, which though essentially did not require compliance to Order XXI Rule 20(1) (a) of the Civil Procedure Code, Cap. 33 R.E. 2002 (the CPC), nonetheless, on 12th September,

2019 the Court issued a notice for the hearing scheduled on 04th October, 2019. And as per the affidavit sworn by Mr. Thobias Michael, who was the Court process server, on 23rd September, 2019, on proof of service, he stated that the said notice was received on 13th September, 2019, by Mr. Maligisa Sakila as well as by Mr. Lucas F. Kweka counsel then acting for the judgment debtors. However, when the matter was called for hearing on 04th October, 2019, the judgment debtors and their advocate were absent, except for Ms. Mashimba, the Counsel for the decree holder, who informed the Court that the judgment debtors' advocate has categorically stated that he had no instructions. Ms. Mashimba then proceeded to request the Court to issue summons to judgment debtors in person, the request which was agreed by the Court and the matter was fixed for 10th October, 2019.

On the 10th October, 2019, when the matter again came for hearing, the Court was informed that despite the service intended, the same could not be done as both judgment debtors seemed to be outside Mwanza, the 1st judgment debtor was said to be in Dar es Salaam while the 2nd judgment debtor was reported to be in Arusha and that in both instance, the exact location of whereabouts was unknown. This was confirmed by affidavit deposed pursuant to Order V Rule 18 of the CPC, by Mr. Silas Lucas Isangi, the process server. The order for substituted service by way of publication was sought and granted and on 17th October, 2019, by way of publication in the Nipashe newspaper page 8, the notice was published.

None of the two judgment debtors entered appearance on the following fixed dates that is 7th November, 2019; 8th November, 2019; 11th November, 2019; 10th February, 2020; 30th March, 2020; 23rd April, 2020 and also on 10th August, 2020.

On the 8th November, 2019, the Court ordered for valuation report of the three (3) landed properties pledged as collateral and on 30th March, 2020 the Court received the valuation reports in respect of Plot No. 850, Block “M” Pasiansi Area, Ilemela Municipality; property on Plot No. 1278, Block “B” Kiseke area, Ilemela Municipality and property on Plot No. 1183 Block “M” Pasiansi area, Ilemela Municipality. All these three properties were mortgaged to the decree holder I & M Bank (T) Ltd as collateral by the judgment debtors for the loaned money.

On 10th August, 2020, Ms. Mashimba for the decree holder entered appearance and prayed to the Court that the application for execution of the Court decree in favour of the decree holder to the tune of Tzs. 1, 174, 932, 432.39 which includes principal sum plus interest which has accrued since 15th February, 2019, be granted.

This Court is satisfied that the judgment debtors were aware of the decision dated 15th February, 2019, the decision which was delivered in the presence of the 1st judgment debtor Mr. Emmanuel Justine Nyerere. Although the application for the execution of the decree was filed within one year, to wit the 24th July, 2019, which

would under normal circumstances not require notice but parties were informed and even when service proved futile substituted service by way of publication in Nipashe newspaper was made on 17th October, 2019. To date none of the two has entered appearance and no good cause has been advanced as to their absence. The three (3) properties subject of this execution proceedings were the ones mortgaged to the decree holder. Since the judgment debtors have failed to fulfil their obligation coming with the Facility Agreements availed to them, this Court does not find any reasonable ground as to why should this application for execution not be allowed.

In light of the above the Court hereby proceeds to allow the application by ordering warrant of attachment and sale of the three listed properties and trucks with registration No. T841 CLX and T462 CLK and Two (2) trailers with registration No. T834 CLX and T938 CLX which were all indicated in the application for execution form filed under Order XXI Rule 9 of the CPC.

The application is granted with costs. It is so ordered.



P. S. FIKIRINI

JUDGE

13th AUGUST, 2020