

**IN THE HIGH COURT OF TANZANIA**

**COMMERCIAL DIVISION**

**AT DARESSALAAM**

**COMMERCIAL CASE NO 156 OF 2018**

**SIGNAL POWER & ENERGY TANZANIA**

**COMPANY LIMITED.....PLAINTIFF/DECREE HOLDER**

**Versus**

**MOLLEL ELECTRICAL CONTRACTORS**

**LIMITED..... DEFENDANT/JUDGMENT DEBTOR**

**Date of Last Order: 13<sup>th</sup> July, 2021**

**Date of Ruling: 28<sup>th</sup> July, 2021**

**RULING**

**MKEHA, J.**

The present ruling aims at resolving some points of preliminary objection raised by Mr. Msamanga learned advocate against the decree holder`s application for execution. Although four points of objection had been raised, only one point of objection which I consider to be determinative is brought forward for determination. That is, **that, the application for execution represents false state of affairs that no previous**

**application was filed contrary to Order XXI Rule 10(2) of the Civil Procedure Code.**

Mr. Msamanga learned advocate submitted in respect of the said ground of objection by stating that, it is not true that there was no previous application for execution. He pointed to the application filed on 03/03/2020 which was struck out by her Ladyship Fikirini, J (as she then was) for reasons of incompetence.

Mr. Lugwisa learned advocate for the decree holder submitted in reply by conceding that, it was a typing error that can safely be condoned under the principle of overriding objective. He thus admitted that the application contravenes the provisions of Order XXI rule 10(2) of the Civil Procedure Code.

Following concession on part of the learned advocate for the decree holder that the application contravenes mandatory provisions of the Civil Procedure Code, there remains no option but to strike out the application for reasons of incompetence. While I advise the decree holder to file a competent application subject to limitation, the application stands struck out. No order for costs.

  
**MKEHA**

**JUDGE**

**28/07/2021**

**Court:** Ruling delivered in the presence of Mr. Msamanga learned advocate for the judgment debtor.



  
**C.P. MKEHA**

**JUDGE**

**28/07/2021**