

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL APPLICATION NO. 191 OF 2018

BETWEEN

**THE REGISTERED TRUSTEES OF TANZANIA SOCIETY FOR PREVENTION
OF CRUELTY TO ANIMALS (TSPCA) DECREE HOLDER**

Versus

BLUE HORIZON TANZANIA LIMITED.....JUDGMENT DEBTOR

Last order: 4th October, 2021

Date of Ruling: 4th November, 2021

RULING

MKEHA, J.

The decree holder is seeking assistance of the court so that the judgment debtor can be ordered to handover property on Plot No. DI Block 714 Morogoro Road / Allykhan , Ilala-Dar es salaam . The decree holder is being represented by Mr. Kisharuli Henry learned advocate. When the judgment debtor was served with a notice to show cause, an affidavit deponed by one Sabry Ally Mohsin was filed for that purpose. In response thereto, the decree holder filed a counter affidavit. Mr.

Mashaka Ngole learned advocate represented the judgment debtor during hearing of the application.

Mr. Ngole learned advocate commenced his submissions by adopting, as part of his submissions, contents of the affidavit containing reasons why the application for execution should not be granted. He then submitted that, the decree subject of execution does not contain an order for handing over the premises or a certificate of title. The learned advocate insisted that, the executing court can only give effect to what the trial court decreed. The learned advocate went on to submit that, the judgment debtor did pay the whole amount decreed in time, which is not disputed by the decree holder. He finally concluded that, if anything, it is for the decree holder to hand over the disputed premises, for the judgment debtor to develop as per the agreement of the parties.

Mr. Kisharuli learned advocate commenced his reply submissions by adopting contents of the counter affidavit as part of his submissions. He then submitted that, what the judgment debtor paid to the decree holder was compensation for delay in effecting payments. And that, upon such payments, there was extension of contract for nine (9) years as from 2019. According to the learned advocate, in terms of paragraph 3 of the decree, the developer/ judgment debtor had to deliver the said

project under the terms and conditions agreed in the Joint Venture Agreement signed by both parties. The learned advocate insisted that, the judgment debtor had failed to do so. The learned advocate referred to no specific part of the decree which ordered the judgment debtor to hand over the disputed premises, in the event of delay in implementing the agreement of the parties.

I ask myself the following question: Can the executing court execute an order having no reflection in the trial court`s decree? I respond in the negative. Under Order XX Rule 6 (1) of the Civil Procedure Code, a decree should agree with the judgment, it should contain the number of the suit, the names and descriptions of the parties and particulars of claim and **should specify clearly the relief granted or other determination of the suit.** See: **UNIAFRICO LTD & TWO OTHERS Vs. EXIM BANK (T) LTD, CIVIL APPEAL No. 30 OF 2006, CAT (Unreported), SARAWAT TRADING AGENCY Vs. UNION OF INDIA, AIR 2004, CAL 267** and **MANTRAC TANZANIA LIMITED Vs. RAYMOND COSTA, CIVIL APPEAL No. 74 of 2014, CAT (Unreported).**

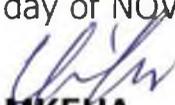
As highlighted hereinabove, the order sought to be executed is not clearly traceable from the decree, but the Joint Venture Agreement of

the parties. That renders the purported order un-executable in terms of the above cited statutory and case law authorities. As correctly submitted by Mr. Mashaka Ngole learned advocate, the executing court can only give effect to what was decreed by the trial court and not otherwise.

For the foregoing reasons, the decree holder is advised to ask assistance of the court to execute proper orders of the trial court or seek rectification of the decree if she believes the same was wrongly or improperly extracted. The application is struck out. No order for costs.

Dated at DAR ES SALAAM this 04th day of NOVEMBER, 2021.




C. P. MKEHA

JUDGE

4/11/2021

Court: Ruling is delivered in the presence of Mr. Ahmed Mwita for the judgment debtor and Ms. Johari, Principal Officer of the decree holder.




C. P. MKEHA

JUDGE