

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT ARUSHA
COMMERCIAL CASE NO 9. OF 2019

SECULARMS TANZANIA LIMITED APPLICANT

VERSUS

M.A. KHARAFI & SONS TANZANIA LIMITEDRESPONDENT

RULING ON EXECUTION

K. T. R. Mteule, J

12 November, 2021 & 16 November, 2021

This is a Ruling on an application for execution of a decree filed under the provision of **Order XXI Rule 11 of the Civil Procedure Code, Cap 33 of 2019 R.E. (CPC)**. The decree sought to be executed was issued by this Court on 13 November 2020 in **Commercial Case no 9 of 2019** where the applicant was the plaintiff and decree holder and the respondent the defendant and judgment debtor. The decree holder filed this application seeking for execution by a way of attachment and sale of the Judgment Debtor's landed property with certificate of title No. 37036, Plot No. 113 located at Kinondoni Mikocheni area together with movable properties which are 40 motor vehicles listed in this application. The execution is intended for recovery of **TZS 350,072,374.72** which is the decretal sum and interests inclusive.

On 10/04/2021 when the application was called, the court ordered service to the Judgment Debtor. On 29/7/2021, when the matter was called for

necessary orders the counsel for the decree holder informed the court that the judgment debtors shifted their offices and couldn't be served hence prayed for substituted service by publication. The court allowed the substituted service and the same was affected through Mwananchi issue of 7 August 2021 and Daily News issue of 6 August 2021. On 24/8/2021, parties appeared where the judgment debtor was represented by Henry Simon holding brief for Mr. Almas Suleiman Advocate for the judgment debtor who was reported to be bereaved. Following his bereavement, the application was once again adjourned. On 8/11/2021 when the application was before me fixed for hearing, Mr. Gwakisa Sambo Advocate for the Decree Holder requested for hearing to proceed ex-parte since the counsel for the judgment debtor was aware of the pendency of the application for execution but for no apparent reason, he opted not to appear on that hearing date. The court allowed the hearing of the application to proceed ex-parte by written submissions. The written submissions by the decree holder having been filed, this is the ruling of the court.

It is submitted by the decree holder that in law execution of a decree will stop only when the decree has been satisfied or when there is an order of stay from a competent court. To support this argument the decree holder cited the cases of **D.B. Shaprya & Co. Ltd vs Gulf Concrete & Cement Products Co. Ltd (Commercial Case No.23 of 2015) TZHC ComD; (24 June 2020).**

He cited further the case of **CRDB Bank PLC versus Finn W. Petersen & 3 Others (Civil Appl. No.367 of 2017) [2018] TZCA** where the court made it clear that unless stay of execution is sought and granted by the court, execution at the High Court will proceed. According to the applicant, since the judgment debtor has neither satisfied the decree nor

obtained any order to stay execution, there is nothing in the eyes of law which may prevent proceeding with the execution.

I have gone through the application by the decree holder and the submissions made herein. The decree of this court was obtained since 13th November 2020. This application for execution was filed on 10th April 2021, only about 5 months from the date of the decree. The court offered opportunity to the judgment debtor to appear and respond to the application, the offer which the judgment debtor neglected causing the hearing to proceed ex-parte.

I agree with the counsel for the decree holder that execution of a decree need to proceed unless the judgment debtor satisfy the decree or obtains an order to stay the execution. There is nowhere in the record to show that either of the two undertakings have been performed. This means, the application for execution is unopposed and nothing legally exists to stop execution. I am satisfied with what is submitted by the counsel for the decree holder that it sufficiently convince the court to allow the execution.

However, I have considered the list of the properties to be attached as compared to the decretal amount. Even without a valuation report, they appear to be excessive in terms of values as compared to the decretal sum sought to be executed. Attachment of 40 pieces of motor vehicles including Trucks and a landed property in Mikocheni may sound unreasonable. Assuming the value of the 40 motor vehicles are spread across to find an assumed average value of each. Assuming further that each vehicle to have an average value of TZS 10,000,000, this means the motor vehicle alone will fetch a value of more than TZS 400,000,000 altogether. If the landed property in Mikocheni Dar es Salaam is assumed to have a lowest

value of TZS 100,000,000.00, this means all the properties may have the lowest value of TZS 500,000,000 on assumption. This is excessively far beyond the value sought to be executed which is TZS 350,072,374.72. It has to be noted that this computation is just an assumption, and they make no reality on the ground. In my view official valuation need to be done to ascertain the proper value of the properties. This assumption is a mere call to the executing officers, Registrar, Court brokers and others to ensure that in the execution process, proper valuation should be done to the listed property and ensure strict compliance with the proviso under Order XXI Rule 15 of the CPC and the Chief Justice Execution Guidelines.

From the foregoing, I allow the application for execution with direction that during execution process an official valuation of the properties listed for attachment and sale should be carried out with comparison with the value of the decree. Strict compliance with the proviso to **Order XXI Rule 15 of the CPC** and **Rule 24** of the **Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) Rules GN. No. 363 of 2017** and any other provisions of law and the Execution Guidelines should be observed. Attachment should not be endorsed for properties which after official valuation the market value exceeds the value of the decree plus the execution expenses permitted under the Rules by more than 5%. It is so ordered.

Dated at Arusha this 17th Day of November 2021



KATARINA T. REVOCATI MTEULE

JUDGE

17/11/2021