

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)**

AT DAR ES SALAAM

COMMERCIAL CASE NO 87 OF 2014

BETWEEN

AFRISCAN GROUP (T) LTDDECREE HOLDER

Versus

SAID ABDALLAH MSANGI JUDGMENT DEBTOR

Date of last order: 30th November, 2021

Date of Ruling: 21st December, 2021

RULING

MKEHA, J.

As a result of Taxation of costs awarded to the applicant in Commercial Case No. 87 of 2014, the respondent was supposed to pay TZS. 5,300,000/= to the decree holder/applicant. Ruling of the Taxing Master was delivered on 18/11/2015. To date, the respondent has not paid the said costs.

When the respondent was invited to show cause as to why an order for execution by a way of arrest and detention should not be issued, he promptly filed an affidavit in the view of showing cause. And, through

Mr. Andrew Miraa learned advocate, the respondent asked the court to stay execution as there is an appeal pending before the Court of Appeal in respect of the decision which awarded costs to the applicant.

Mr. Rutabingwa learned advocate who appeared for the applicant submitted in reply that, from the respondent's own affidavit there is nothing suggesting that, there is any pending appeal of the matter under execution. The learned advocate further submitted that, there is no order for stay of execution hence the application ought to be granted.

It is trite law that pendency of appeal is not a bar to the execution. Therefore, even if there was a pending appeal before the Court of Appeal, the respondent would still be obliged to seek an order for stay of execution from relevant authorities.

Fortunately, as rightly submitted by Mr. Rutabingwa learned advocate, even the respondent's affidavit does not indicate that the matter under execution has been appealed against. Even if it were true, considering that the decision awarding costs to the applicant was delivered more than five years ago, in no way can an application for stay of execution of the said decision be determinable at this court. See Order XXXIX Rule 5 (2) of the Civil Procedure Code, Cap 33 R.E 2019

From the foregoing, it is my holding that, the respondent/judgement debtor has failed to show cause why the application for execution should not be granted in the manner prayed. That is, by way of arresting and detaining the judgement debtor as a civil prisoner. The application for execution is consequently granted as prayed. Unless the judgment debtor soon pays the said sum of TZS. 5,300,000/=, he shall be detained as a civil prisoner for a duration of six months. Three months period is given to the respondent to pay the said sum. Should the respondent fail doing so, the decree holder will be invited to deposit the monthly allowance for the civil prisoner's up keep in prison. The allowance is determined at TZS. 300,000/= per month. It is so held.

Dated at Dar es salaam this 21st day of December 2021




C.P MKEHA

JUDGE

21/12/2021

Court: Ruling is delivered in the presence of the parties' advocates.




C.P MKEHA

JUDGE

21/12/2021