

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

**(ARISING FROM EXECUTION PROCEEDINGS IN RESPECT OF
COMMERCIAL CASE NO. 7 OF 2003)**

BETWEEN

TANZANIA SEWING MACHINES

COMPANY LIMITED.....DECREE HOLDER

AND

NJAKE ENTREPRISES LIMITED.....JUDGMENT DEBTOR

Date of Last Order: 28th June, 2022

Date of Ruling: 30th August, 2022

RULING

MKEHA, J.

This ruling follows filing of an application for execution in which the applicant is moving the court to order arrest and detention of Mr. Japhet Lema, Managing Director of the Judgment Debtor Company unless he

surrenders a Certificate of Title CT No. 1439 to the Decree holder. When the judgment debtor was invited to show cause, Mr. Cleophas James submitted that there was no decree capable of being executed following decision of the Court of Appeal dated 25th September 2009 which nullified judgment, decree and proceedings in Commercial Case No. 7 of 2003. In view of the learned advocate, the order sought to be executed is not a decree within the meaning of Order XX Rule 6 (1) of the Civil Procedure Code.

Mr. Theodori Primus learned advocate submitted in reply that, the order sought to be executed traces its origin from restitution proceedings which were instituted by the decree holder after nullification of the proceedings and decision of Commercial Case No. 07 of 2003. According to the learned advocate, the Court of Appeal's decision on restitution orders stands unchallenged. It was for these reasons, the learned advocate believed that, the application for execution was competent.

The issue is **whether there is a court order yet to be executed**. It is true that, in Civil Appeal No 52 of 2011 between the parties, the Court of Appeal held that the appellant was entitled to a restitution order to enable him repossess the property in dispute.

Following the decision of the Court of Appeal, the decree holder approached the trial court asking it to detain the respondents as civil prisoners for their resistance and obstructing the applicant in obtaining possession of the disputed property. The trial court, on 6th September 2012 ordered the 2nd respondent who was in the possession of the suit premises, to make vacant possession of the premises within seven days from the date of the court's order.

On 22nd October 2013, in the presence of the parties' learned advocates, the 2nd respondent reported to the court that, he had already vacated the suit premises as decreed by the Court of Appeal. All these facts are contained in the trial court's file. Therefore, as far as the restitution order by the Court of Appeal is concerned, it is my holding that the order of the Court stands satisfied.

For the foregoing reasons, the application for execution is dismissed. I make no order as to costs.

DATED at DAR ES SALAAM this 30th day of August 2022.



C. P. Mkeha
C. P. MKEHA,

JUDGE

30/08/2022

Court: Ruling is delivered in the presence of Ms. Rehema Samwel
Learned advocate for the applicant.



C. P. Mkeha
C. P. MKEHA,

JUDGE

30/08/2022