

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

**AT DAR ES SALAAM**

**COMMERCIAL REVIEW NO. 6 OF 2022**

**(Arising from Commercial Case No. 47 of 2020)**

**NAM ENTREPRISES LIMITED ..... 1<sup>st</sup> APPLICANT**

**STEPHEN KORIDINI LUKUMAY ..... 2<sup>nd</sup> APPLICANT**

**ALEX STEPHEN LUKUMAY ..... 3<sup>rd</sup> APPLICANT**

**ELIAS STEPHEN KORIDIN LUKUMAY ..... 4<sup>th</sup> APPLICANT**

**NAMNYAKI STEPHEN LUKUMAY ..... 5<sup>th</sup> APPLICANT**

**Versus**

**FIRST NATIONAL TANZANIA LIMITED ..... RESPONDENT**

Date of last Order: 15<sup>th</sup> September 2021

Date of Ruling: 15<sup>th</sup> November 2022

**RULING**

**MKEHA, J:**

In this application, the applicants are moving the court for an order of review resulting into setting aside a prohibitory order against the applicants' properties located at Plot No. 47 Block "J" Kariakoo area within Ilala Municipality, Dar es Salaam City with certificate of title No. 30035 and Plot No. 5 Block 22 located at Majengo Area Dodoma City with Certificate of title No. 162007/123 both

registered in the name of the 2<sup>nd</sup> Applicant. Also Plot No. 2, Block "E" located at Majengo Area Dodoma City with Certificate of Title No. 19967 registered in the name of the 3<sup>rd</sup> Applicant for being improperly procured.

The application is made under Order XLII Rule 1 (1) (b), Rule 3 and Rule 5 (1) of the Civil Procedure Code. Whereas Mr. Ramadhan Karume learned advocate represented the applicants, Mr. Joseph Kipeche learned advocate represented the respondent. Although the Memorandum of Review contains three grounds, in the course making arguments the Applicants advocate abandoned two of the grounds and urged a single ground as hereunder:

**1. That the applicants were denied their right to appear and defend themselves against the order as there was no summons to show cause served to them.**

According to written submissions filed by Mr Ramadhan Karume learned advocate the application for execution of the decree against the applicants falls within the cases to which summons to show cause ought to be issued under Order XXI Rule 20 of the Civil Procedure Code so that the applicants could have shown cause as to why the decree should not have been executed against them.

The learned advocate cited the case of **JOLLY GEORGE VEGHESE & ANOTHER Vs BANK OF TANZANIA (sic) OF COCHIN AIR 1980 SC 470** in which it was held that, the simple default to discharge is not enough.

There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past or alternatively, current means to pay the decree, some or a substantial part of it. The provision emphasizes the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and strained circumstances will play prominently.

Mr. Kipeche learned advocate submitted in reply that, the applicants' argument was a misconceived one. According to Mr. Kipeche learned advocate, the decree in Commercial Case No. 47 of 2020 was passed on 13<sup>th</sup> July 2021 and the application for execution was filed on 5<sup>th</sup> May 2022, a period of less than one year from the date the decree was passed. The learned advocate submitted that, under the law, notice to show cause is only issued where an application for execution is made more than one year after the date of the decree or where an application for execution is made against the legal representative of a party to the decree. Order XXI Rule 20 (1) (a) and (b) of the Civil Procedure Code was cited. The learned advocate was emphatic that, since the application for execution was filed before the expiry of one year from the date of the decree, the court was right in not issuing notice to the applicants/ judgement debtors.

The issue for determination is **whether the court was justified to issue**

**a prohibitory order before issuance of notice to show cause to the judgement debtors.** Under Order XXI Rule 20 (1) (a) and (b) of the Civil

Procedure Code, instances in which a notice to show cause has to be issued are listed. The following are the instances:

- (i) Where an application for execution is made more than one year after the date of the decree.
- (ii) Where an application for execution is made against the legal representative of the judgement debtor.
- (iii) Where an application is made more than one year after the date of the last order made on any previous application for execution.

Another instance is where the decree is for the payment of money and the execution is sought for arrest and detention of the judgement debtor. **See:** Order XXI Rule 35 (1) of the Civil Procedure Code.

Even under the four instances listed hereinabove, the executing court is permitted to issue execution processes without issuing summons to show cause if, for reasons to be recorded, it considers that, the issue of such notice would cause unreasonable delay or would defeat the ends of justice. **See:** Order XXI Rule 20 (2) of the Civil Procedure Code.

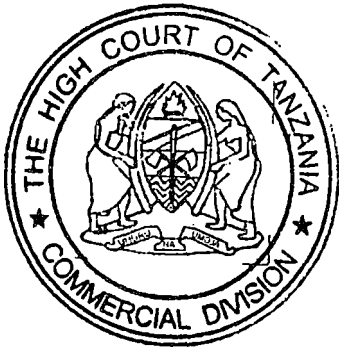
In this instant application, the applicants do not deny that the application for execution against them was filed within one year counting from when the decree under execution was passed. Therefore, the court was justified to issue prohibitory orders against the judgement debtors' properties as the law allows such a course. **See:** Order XXI Rule 20 (1) (a) of the Civil Procedure Code. The Indian Caselaw cited by the learned advocate for the applicants is of no assistance to the Applicants. This is because, in the cited case, the court was called upon to decide whether the judgment debtor could be imprisoned for failure to pay his debts. The issue in the said case was not issuance of a notice to show cause but whether imprisonment could be ordered under Order XXI Rule 37 of the Indian Code of Civil Procedure. The authority is therefore distinguishable. I hold that, the applicants have failed locating themselves within the ambit of Order XXI Rule 1 (a) and (b) of the Civil Procedure Code.

Going by the principles governing review jurisdiction as found in the case of **SHAMIM SHAHA VS IBRAHIM HAJI SELEMANI, CIVIL APPLICATION NO. 163/17 OF 2019, CAT**, I find no good reasons for reviewing this courts order dated 9<sup>th</sup> May 2022.

For the foregoing reasons, the application is held to be unmeritorious.

The same is consequently dismissed with costs.

DATED at DAR ES SALAAM this 15<sup>th</sup> day of November 2022



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**C. P MKEHA**

**JUDGE**

**15/11/2022**

Delivered this 15<sup>th</sup> day of November, 2022 in the presence of Advocate Asia Kessy for the Applicant and in the absence of the Respondent's Counsel.



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**J. M. MINDE**

**DEPUTY REGISTRAR**

**15/11/2022**