

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

**ARISING FROM EXECUTION PROCEEDINGS IN RESPECT OF
COMMERCIAL CASE NO. 29 OF 2016**

BETWEEN

YARA TANZANIA LIMITED..... DECREE HOLDER

versus

LEONARD DOMINICK RUBUYE

T/A RUBUYE AGRO CHEMICAL SUPPLY..... JUDGMENT DEBTOR

Date of last Order: 11th May, 2023

Date of Ruling: 12th May, 2023

RULING

MKEHA, J:

When the judgment debtor was invited to show cause why the application for execution should not be granted, an affidavit was filed for that purpose. Through the said affidavit sworn by Mr. Leonard Dominick Rubuye, the judgment debtor and in the submissions made in court by Mr. Mkenda learned advocate for the judgment debtor, the following two reasons were offered. Firstly, that the decretal sum had been paid even before the

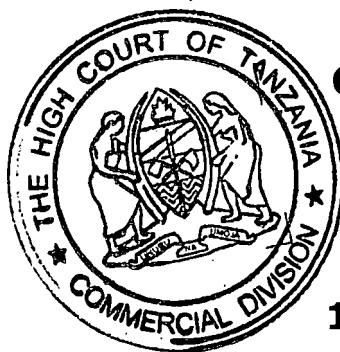
institution of Commercial Case No.29 of 2016. Secondly, that the property intended to be attached is subject of a mortgage at NMB Bank.

Mr. Erick Denga learned advocate submitted that at the time when the judgment debtor purports to have paid the decretal sum the same was still uncertain. As to the facts regarding third parties' interest the learned advocate urged the court to let third parties' interests be pursued by the actual third parties and not the judgment debtor.

The issue is **whether the judgment debtor has succeeded in showing cause why the application for execution should not be granted.** By submitting that the decretal sum was paid before the institution of Commercial Case No. 29 of 2016 the judgment debtor appears to be challenging the correctness of the trial court's findings which is improper. After the judgment debtor had failed to challenge the decree before the Court of Appeal, he cannot succeed in doing so before the executing court. The executing court has to execute it. The judgment debtor is not one of those who can prefer objections to execution of a decree under Order XXI rule 57(1) of the Civil Procedure Code.

For the foregoing reasons I hold that the judgment debtor has failed showing cause why the application for execution should not be granted. Consequently, the application for execution is granted. Let prohibitory orders be issued against properties on Plot. No. 115 Block 6 Kinondoni/ Mbweni JKT under of Title No. 68859 and Plot No. 183 Block B Kinondoni/ Tegeta under certificate of Title No. 46284.

Dated at Dar es salaam this 12th day of May, 2023.




C.P. MKEHA

JUDGE

12/05/2023

Court: Ruling is delivered in the presence of Mr. Mkenda learned advocate for the judgment debtor.




C. P. MKEHA

JUDGE

12/05/2023