#### IN THE HIGH COURT OF TANZANIA

## (COMMERCIAL DIVISION)

## AT DAR ES SALAAM

# Arising from Execution Proceedings of Commercial Case No 16 of 2000

#### BETWEEN

VIP ENGINEERING AND MARKETING LIMITEDDECREE HOLDER
Versus
SGS SOCIETE GENERALE DE
SURVEILLANCE SA1st JUDGMENT DEBTOR
SGS TANZANIA SUPERINTENDANCE
COMPANY LIMITED2 <sup>nd</sup> JUDGMENT DEBTOR
BENEDICT K. KARUHO3 <sup>rd</sup> JUDGEMENT DEBTOR
HARRY LEONARD FREAKE4 <sup>th</sup> JUDGMENT DEBTOR
COLLINS ANDREW SIDNEY ROBBERY5 <sup>th</sup> JUDGMENT DEBTOR
CRAIG JOHN WILSON6 <sup>th</sup> JUDGMENT DEBTOR
SAMWEL KOJO GYAN7 <sup>th</sup> JUDGEMENT DEBTOR
JEAN FREDRIC GEORGES
MARIE HELLEN8 <sup>th</sup> JUDGEMENT DEBTOR
CARLA DENISE F. DE GEYSELEER9 <sup>th</sup> JUDGEMENT DEBTOR
KWOK WANGNG10 <sup>th</sup> JUDGEMENT DEBTOR
JEAN PAUL ANTOINE BONVIN11 <sup>th</sup> JUDGEMENT DEBTOR

Date of last order: 8th February 2023

Date of Judgment: 17th March 2023

RULING

MKEHA, J

When the 3<sup>rd</sup> to 11<sup>th</sup> respondents were served with notices to show cause

why they should not be arrested and committed to prison as civil prisoners

on account of their failure to pay the decretal sum, only the 6th to 11th

respondents filed affidavits stating their reasons for not being committed to

prison as civil prisoners. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents did not file

affidavits stating reasons why they should not be committed to prison as

civil prisoners.

According to Mr. John Kamugisha learned advocate for the 6th to 11th

respondents and in terms of the affidavits of the said respondents, failure

to pay the decretal sum was caused by various reasons including the fact

that the decree sought to be executed had not been served to them (6<sup>th</sup> to

respondents). The said judgement debtors renounced holding

positions of Directors or Principal Officers who would be held responsible

for debts of a company. Those who used to hold positions of Directorship

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or Principal Officers of the 1<sup>st</sup> and 2<sup>nd</sup> Judgement Debtors stated in their respective affidavits that they seized holding the said positions from the year 2014 to 2019. It was submitted on behalf of the said respondents that the decree holders had failed to adduce evidence on the way the said respondents concealed properties or the way they obstructed execution. The learned advocate submitted that, there was no proof of acts of bad faith calculated to obstruct or delay the decree holder to execute his decree.

In the decree holder's reply submissions by Mr. Ngalo learned advocate and the counter affidavits of the 6<sup>th</sup> to 11<sup>th</sup> Judgment Debtors/respondents, it was stated that, the 3<sup>rd</sup> to 11<sup>th</sup> respondents were persons responsible to settle the decretal sum. According to the decree holder's counsel, the respondents should have disclosed assets liable to attachment. The learned advocate submitted that, by their failure to submit affidavits for showing cause the 3<sup>rd</sup> to 5<sup>th</sup> respondents should be considered to have admitted that they should be committed to prison as civil prisoners for their failure to pay the decreed amounts.

According to the decree holder the 1<sup>st</sup> and 2<sup>nd</sup> Judgement Debtors had previously committed themselves to provide security for the due

performance of the decree. In this regard, reference was made to an affidavit sworn by the 7<sup>th</sup> Judgement Debtor (Samwel Kojo Gyan) on 16<sup>th</sup> August, 2016. The said affidavit, according to the decree holder had been filed at the Court of Appeal in Civil Application No. 251 of 2016. In view of the learned counsel for the decree holder therefore, a story that the Judgement Debtors had not been served with the decree was without truth.

It is true that under Order XX1 Rule 39 (2) (b) of the Civil Procedure Code the decree holder who asks for detention of the judgement debtor as a civil prisoner has to prove the transfer, concealment or removal by the judgement debtor of any part of his property after the date of the institution of the suit in which the decree was passed or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree holder in the execution of the decree. Indeed, as correctly submitted by Mr. Kamugisha learned advocate, the decree holder has not satisfied the conditions under Order XX1 Rule 39 (2) (b) of the Civil Procedure Code. However, the court is empowered to take into account other allegations. Under Order XXI Rule 39 (2) (d) of the Civil Procedure Code, refusal or

neglect on the part of the judgement debtor to pay the amount of the decree or some part thereof when he has the means of paying, is one of the acts which may justify detention of the judgement debtor as a civil prisoner.

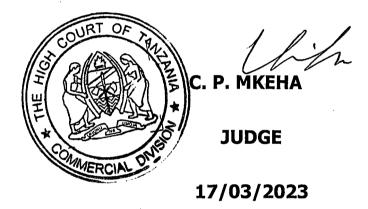
In this case, the judgment debtors who filed affidavits in view of showing cause stated that, they did not pay for having not been served with the decree sought to be executed. However, the fact that the judgement debtors had been served with the decree and that had previously undertaken to furnish security for due performance of the said decree remains uncontroverted on part of the judgement debtors. In my considered view therefore, this is one of such cases in which the judgement debtor refuses or neglects to pay while having means of doing so.

Therefore, while I hold the  $3^{rd}$  to  $5^{th}$  respondents to have conceded to the application, I hold the  $6^{th}$  to  $11^{th}$  respondents to have failed showing cause for not being committed to prison as civil prisoners on account of their failure to settle the decretal sum. I proceed to issue the following orders:

Subject to deposing subsistence allowance which is determined at TZS 500,000/= per month per each judgement debtor (3<sup>rd</sup> to 11<sup>th</sup> Judgement

Debtors) to relevant authorities, I hereby order issuance of arrest warrants against the 3<sup>rd</sup> to 11<sup>th</sup> judgement debtors to be committed to prison as Civil prisoners. The 3<sup>rd</sup> to 11<sup>th</sup> Judgement Debtors shall be imprisoned for six months as civil prisoners on account of their refusal/neglect to pay the decretal sum while having means of doing so. It is so held.

Dated at DAR ES SALAAM this 17<sup>th</sup> day of March, 2023.



**Court**: Ruling is delivered in the presence of Mr. James Buchard Rugemarila, Director of the Decree Holder and the parties' advocates.



C. P. MKEHÁ

**JUDGE** 

17/03/2023