

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 LIMITED.....DECREE HOLDER

Versus

SGS SOCIETE GENERALE DE

SURVEILLANCE SA.....1st JUDGMENT DEBTOR

SGS TANZANIA SUPERINTENDANCE

COMPANY LIMITED.....2nd JUDGMENT DEBTOR

BENEDICT K. KARUHO.....3rd JUDGEMENT DEBTOR

HARRY LEONARD FREAKE.....4th JUDGMENT DEBTOR

COLLINS ANDREW SIDNEY ROBBERY.....5th JUDGMENT DEBTOR

CRAIG JOHN WILSON.....6th JUDGMENT DEBTOR

SAMWEL KOJO GYAN.....7th JUDGEMENT DEBTOR

JEAN FREDRIC GEORGES

MARIE HELLEN.....8th JUDGEMENT DEBTOR

CARLA DENISE F. DE GEYSELEER.....9th JUDGEMENT DEBTOR

KWOK WANGNG.....10th JUDGEMENT DEBTOR

JEAN PAUL ANTOINE BONVIN.....11th JUDGEMENT DEBTOR

Date of last order: 8th February 2023

Date of Judgment: 17th March 2023

RULING

MKEHA, J

When the 3rd to 11th 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 3rd, 4th and 5th 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 (6th to 11th 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

or Principal Officers of the 1st and 2nd 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 6th to 11th Judgment Debtors/respondents, it was stated that, the 3rd to 11th 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 3rd to 5th 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 1st and 2nd 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 7th Judgement Debtor (Samwel Kojo Gyan) on 16th 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 3rd to 5th respondents to have conceded to the application, I hold the 6th to 11th 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 (3rd to 11th Judgement

Debtors) to relevant authorities, I hereby order issuance of arrest warrants against the 3rd to 11th judgement debtors to be committed to prison as Civil prisoners. The 3rd to 11th 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 17th day of March, 2023.




C. P. MKEHA

JUDGE

17/03/2023

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




C. P. MKEHA

JUDGE

17/03/2023