

**THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY)
AT DAR ES SALAAM
EXECUTION NO. 76 OF 2020**

*(Arising from Bill of Costs No.148 of 2019 before Hon. Hamza, Taxing
Master)*

PETA MHOMA (As the Administratrix of the estate of
the late **JUMANNE MHOMA**) **DECREE HOLDER / APPLICANT**

VERSUS

CHARLES HANS KIRENGA **JUDGMENT DEBTOR / RESPONDENT**

RULING

Date of Last Order: 28.09.2022

Date of Ruling: 28.09.2022

A.Z.MGEYEKWA ,J

This is an Application for Execution of a Decree brought under Order XXI Rule 9, and 10 (2) of the Civil Procedure Code Act, Cap. 33 [R.E 2019]. The applicant applies for the execution of the award dated 4th June, 2020 against Charles Hans Kirenga. The applicant prays for this court to order the Judgment Debtor to pay the Decree Holder a sum of Tshs. 13,526,000/= and costs of execution and in default thereof, the Judgment

debtor namely Charles Hans Kirenga be arrested and detained as a Civil Prisoner.

The application was argued before me on 28th September, 2022 whereby the Decree Holder and the Judgment Debtor appeared in person unrepresented.

The Judgment Debtor was brief, and informed this Court that they have failed to settle the matter among themselves, therefore, Hon. Deputy Registrar has transferred the file before a Judge to proceed with hearing. The Judgment Debtor had not much to say, he stated that he has committed himself to pay the said amount.

Suo mottu I prompted the parties at the very outset to satisfy this court on the competence of the application before me. I raised such a concern because on perusal of the record of application before I convened in composing the judgment, I noted a point of law that the application is omnibus and prematurely filed before this Court. The parties had nothing to say rather they leave the matter to the Court.

I informed the parties that the application before this Court is improper because the Decree Holder has combined two prayers instead of exhausting one prayer at a time. The Decree Holder has included the second or last resort of ordering the Judgment Debtor to be arrested and detained as a civil prisoner which is not correct. I understand that the

Decree Holder's prayer is originating from the same Judgment and decree, however, the prayers are different, and worse enough the applicant has not exhausted other remedies for executing the award of this court. Before ordering the detention of the Judgment Debtor as a civil prison, the applicant was required to identify the properties of the Judgment Debtor or bank account to execute the award of this court. Section 42 (a) and (b) of the Civil Procedure Code Cap.33 [R.E 2019] provides that:-

"42. Subject to such conditions and limitations as may be prescribed, the court may, on the application of the Decree Holder, order the execution of the decree-

a) by delivery of any property specifically decreed;

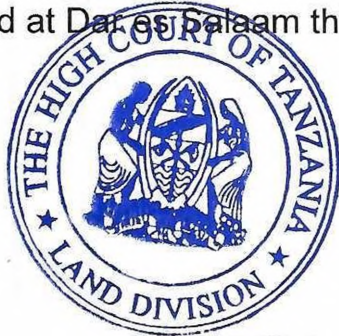
(b) by attachment and sale or by sale without attachment of any property."

Guided by the above provision of law, it is clear that this court is not moved to determine the matter. If the normal procedure for execution fails then the applicant can opt for the last resort of executing the decree of this court by filing an application to detain the Judgment Debtor in civil prison not otherwise.

In the upshot, I find that the application before this Court is prematurely filed. Therefore, I proceed to strike out the application. No order as to the costs.

Order accordingly.

Dated at Dar es Salaam this date 28th September, 2022.




A.Z.MGEYEKWA
JUDGE
28.09.2022

Ruling delivered on 28th September, 2022 via video conferencing whereas both parties were remotely present.




A.Z.MGEYEKWA
JUDGE
28.09.2022