

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**EXECUTION NO. 65 OF 2022**

*(Arising from Judgment in Land Case No. 352 of 2017)*

**THE REGISTERED TRUSTEES OF SEVENTH DAY ADVENTIST CHURCH OF TANZANIA .....DECREE HOLDER**

**VERSUS**

**PIUS MTENGWA.....1<sup>ST</sup> JUDGMENT DEBTOR**

**HEZRON MWASANGITE.....2<sup>ND</sup> JUDGMENT DEBTOR**

**MAGATI K. WIGA.....3<sup>RD</sup> JUDGMENT DEBTOR**

**SAAD AYOUB.....4<sup>TH</sup> JUDGMENT DEBTOR**

**ANFRED RWANZO.....5<sup>TH</sup> JUDGMENT DEBTOR**

*Date of last order: 23/11/2022*

*Date of ruling: 30/11/2022*

**RULING**

**A. MSAFIRI, J.**

This is a ruling on application for execution filed by the above named decree holder on 25<sup>th</sup> July 2022. The decree holder is seeking for an order of the Court to compel the judgment debtors to a sum of Tshs. 10,000,000/= being the amount awarded in Land Case No.352 of 2017 in which the judgment debtors who were defendants in the said case were ordered to pay the decree holder a sum of Tshs. 10,000,000/= as general damages. *Aells*

The mode of execution preferred by the decree is to have the judgment debtors arrested and detained as civil prisoners until they pay the decreed amount.

Having being served with the application for execution the judgment debtors were served with notice to show cause as to why execution should proceed. There have been several adjournments granted to the judgment debtors to settle the decreed amount but all ended in vain. The decree holder therefore prayed for execution to proceed.

On 23<sup>rd</sup> November 2022 when the matter was called on for the judgment debtors to show cause Mr. Livino Haule being assisted by Ms. Caroline Hosea learned advocates appeared for the decree holder. Mr. Daudi Mzeri learned advocate appeared for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> judgment debtors while the 5<sup>th</sup> judgment debtor was represented by Ms. Juliana Douglas learned advocate.

Mr. Mzeri submitted that execution should not proceed for the reason that there are negotiations going on between the decree holder and 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> judgment debtors. On his part Ms. Douglas submitted that execution should not proceed because the 5<sup>th</sup> judgment debtor has not

*Acts.*

trespassed on the decree holder's land. The learned advocate for the 5<sup>th</sup> judgment did not say anything on the payment of Tshs. 10,000,000/= awarded to the decree holder.

On reply Mr. Haule learned advocate for the decree holder contended that there were several adjournments granted by the Court following the prayers by the judgment debtors to negotiate with the decree holder however the judgment debtors did not show any cooperation, he prayed therefore for the execution to proceed.

Having heard the parties' arguments, I have keenly gone through the record of the present application and I found that there were several attempts by the parties to finalize the matter amicably after the judgment debtors had prayed for adjournments. This is evidenced by the proceedings dated 20<sup>th</sup> September 2022, 3<sup>rd</sup> October 2022 and 27<sup>th</sup> October 2022. But all of them were fruitless.

Hence I am of the settled opinion that if the judgment debtors had intention to settle the decreed amount they would have done so long ago. Granting further adjournments for the reason of the purported settlement is

*Alles.*

contrary to the spirit of the law. The decree holder is to enjoy the fruits of the decree without undue delay.

Thus in the circumstance I order the judgment debtors to pay the sum of Tsh 10,000,000/= plus the interest of 5% on principal sum from the date of the ruling to the date of payment which should be effected within 30 days from the date of this ruling failure of which they shall be arrested and committed as civil prisoners in Civil Prison in Tanzania for a period of three months. The costs of this execution shall be borne by the judgment debtors.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal dotted line.

**A. MSAFIRI**

**JUDGE**

**30/11/2022**