

**IN THE HIGH COURT OF TANZANIA**  
**(LAND DIVISION)**  
**AT DAR ES SALAAM**  
**EXECUTION NO. 61 OF 2021**

**VERONICA KIBWANA** (As the Administratrix of the Estate  
Of the Late Jacob Kibwana ..... **1<sup>ST</sup> DECREE HOLDER**

**SAID MBAGA** ..... **2<sup>ND</sup> DECREE HOLDER**

**VERSUS**

**KHAMIS ALLY KHAMIS**..... **JUDGMENT DEBTOR**

**RULING**

*Date of Last Order: 20.10.2022*

*Date of Ruling: 23.11.2022*

**A.Z.MGEYEKWA, J**

This is an Application for Execution brought under Order XXI, Rule 28 of the Civil Procedure Code [R.E 2019]. The applicant applies for the execution of the award against the Judgment Debtor. The applicant prays for this court to order the Judgment Debtor to pay the Decree Holder a sum of Tshs.

20,000.000/= costs of execution and in case of default thereof, the Judgment Debtors be detained as a Civil Prisoner.

*Suo motu* I prompted the counsel for the Decree Holder's counsel 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 was prematurely filed before this Court.

The applicant's counsel was brief, Ms. Gladness Lema submitted the Decree Holder prays the Judgment Debtor to pay Tshs. 20,000,000/=, in case they will fail to pay then the 1<sup>st</sup> respondent be detained as a civil prisoner.

I have heard both counsels' submissions, and from the outset, I hold that the instant application is improper before this Court because the Decree Holder has not exhausted other modes of execution, instead, he wants this Court to order the Judgment Debtor to be arrested and detained as a civil prisoner. Before ordering the detention of the Judgment Debtor as a civil prison, the applicant was required to enforce the award vide other modes of execution. Resorting to the arrest and detention mode is not the party's choice but a matter of legal practice. Before invoking that mode, there must be clear attempts done by the Decree Holder in enforcing the said award by other means legally provided but in vain. The modes of execution are clearly stated

under 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 the application is lodged prematurely before this Court.

Having observed as hereinabove, 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 23<sup>rd</sup> November, 2022.



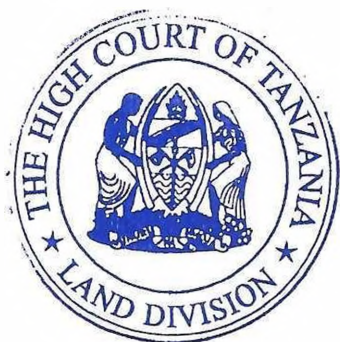
A.Z.MGEYEKWA

**JUDGE**

23.11.2022

Ruling delivered on 23<sup>rd</sup> November, 2022 via audio teleconferencing whereas Ms. Gladness Lema, counsel for the Decree Holder, and Ms. Gladness,

counsel holding brief for Mtatiro reported sick for the Judgment Debtor were remotely present.



  
A.Z. MGEYEKWA

**JUDGE**

23.11.2022