

**THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY)  
AT DAR ES SALAAM  
EXECUTION NO. 13 OF 2022**

*(Arising from Land Case No. 131 of 2019 and Misc. Land Application No.  
373 of 2021)*

**UNYANGA RABIKIRA MASAWA ..... 1<sup>ST</sup> APPLICANT/ DECREE HOLDER**

**JEAN MOTO MILLIKEN ..... 2<sup>ND</sup> APPLICANT/ DECREE HOLDER**

**VERSUS**

**CRUCIAL INVESTMENT LIMITED ..... JUDGMENT DEBTOR / RESPONDENT**

**RULING**

*Date of last Order: 10.05.2022*

*Date of Ruling: 13.05.2022*

**A.Z.MGEYEKWA ,J**

This is an Application for Execution of a Decree brought under Order XXI Rule 9 and 28 of the Civil Procedure Code Act, Cap. 33 [R.E 2019]. The applicant applies for the execution of this court Decree in Land Case No. 131 of 2019 where the parties signed a Deed of Settlement and the Judgment Debtor committed himself to pay Tshs. 235,000,000/= to the

Decree Holders but the Judgment Debtor did honour the Deed of Settlement. Hence the applicants lodged the instant application.

The application was argued before me on 10<sup>th</sup> May, 2022 whereby the applicants afforded the legal service of Mr. James Evarister, learned counsel. The matter proceeded *ex parte* against the Judgment Debtor. There is no dispute that the respondent was duly being served to appear in court but for the reasons known to himself, he opted not to appear in court. Therefore, I grant the Decree Holders' counsel prayer to proceed *ex parte* against the Judgment Debtor.

Submitting in support of the application, Mr. James contended that the matter is related to the execution of Decree in Land Case No. 131 of 2019. He went on to submit that the Judgment Debtor filed a Deed of Settlement and committed himself to pay the Decree Holders Tshs. 235,000,000./=. He submitted that the parties agreed to sell Farmland No. 999 with LO No. 118694 located at Kawe area within Kinondoni Municipality in Dar es Salaam Region to the Judgment Debtor. He added that upon the Deed of Settlement being filed and adopted as a Decree of the court, the Judgment Debtor sold the said Farmland but he did not pay the Decree Holders.

The learned counsel for the applicants went on to submit that the Decree Holders filed an application for execution and asked the court to attach

and sell Farmland No.999. He added that the applicants who purchase the said Farmland objected to the execution but was unsuccessful. He submitted that the Decree Holders in this application entered into a Deed of Settlement with the Decree Holder in Land Case No. 131 of 2019, to pay her in order to obtain the power to claim a refund from the Judgment Debtor in Land Case No. 131 of 2019. He added that the prayer was granted, and the Decree Holders in this application paid Tshs. 235,000,000.00 to settle the matter, the liability which was supposed to be paid by the Judgment Debtor in this application.

Mr. James continued to submit that they have tried to allocate the Judgment Debtor properties but they did not manage to find any property in the name of the Company of the Judgment Debtor. He added that they traced the bank accounts of the Judgment Debtor without success. Mr. James submitted that they tried all means to allocate the Judgment Debtor in vain. He added that the only alternative was to urge this court to issue an order of detaining the Directors of the Company; Ernest Charles Magesa, Joanrachel Johnson Kitunga., Nashea Mchora Kitua, the Secretary Company, and Godson Meshack Simanga, the person who represented the Judgment Debtor in filing the Deed of Settlement in Land Case No. 131 of 2019.

On the strength of the above, the learned counsel for the applicants beckoned upon this court to issue the order to detain the Judgment Debtor as a civil prisoner.

Having considered the submission of the learned counsel for the applicants, I should observe that the right to commit a Judgement Debtor to jail as a Civil Prisoner is provided under Order XXI Rules 28 of the Civil Procedure Code Cap.33. It provides that:-

*“ 28. decree for the payment of money as the alternative to some other relief, may be executed by the detention as a civil prisoner of the judgment debtor or by the attachment and sale of his property, or by both.*

Equally, Order XXI Rules 35 (1) (2) and 36 of the Civil Procedure Code Cap.33 [R.E 2019] provide that:-

*35. (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention as a civil prisoner of a Judgement Debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to prison.*

*(2) Where appearance is not made in obedience to the notice, the Court shall, if the Decree Holder so requires, issue a warrant for the arrest of the Judgement Debtor.*

*36. Every warrant for the arrest of a Judgement Debtor shall direct the officer entrusted with its execution to bring him before the Court with a convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.*

Order XXI Rule 35 of the Civil Procedure Code Cap.33 [R.E 2019] limits the arrest of the Judgement Debtor only if he pays the amount of the Decree and costs of the arrest. It is the finding of this Court that the Judgement Debtor's failure to pay the Decree Holder Tshs. 235,000,000/= and his failure to appear in court represents a dishonest and fraudulent character which compels this Court to issue an order of arresting and detaining the Directors of the Crucial Investment Limited, Judgment Debtor as a civil prisoner.

I understand that there may be other ways of enforcing a civil debt such as attachment of property. However, as stated by the applicants' counsel, the normal execution of the Decree has failed because the Judgment Debtor does not want to honour his promise. The learned counsel for the applicant also stated that it is hard to trace the properties of the Judgment

Debtor since the whereabouts of the Judgment Debtor is unknown. Therefore, the only solution is to arrest them and order them to pay the said money failure that they will be detained as a civil prisoner. The Court of Appeal of Tanzania in the case of **the Grand Alliance Ltd v Mr. Wilfred Lucas Tarimo and 4 Others**, Civil Application No. 187/16 of 2019 made the following findings:-

*“ It follows then that the imprisonment of a Judgement Debtor in execution cannot be ordered unless the conditions and limitations are satisfied. One of those conditions is that there must be an application for execution of a decree for payment of money by arrest and detention in prison of a Judgement Debtor (see Sections 42 and 44 and Order XXI Rule 10 of the code) after receipt of the application the executing Court has the discretion to issue a notice to show cause to the person against whom execution is sought on a date to be specified in the notice, why should not be committed to prison or to issue a warrant of his arrest (See order XXI Rule 35 (1) of the Code) the purpose of this warrant is to bring the Judgement Debtor before the executing Court and it is not an automatic order for committal as Civil Prisoner because the executing Court is required to be satisfied with the conditions stated under Order XXI Rule 39 (2) of the Code before committing a person to prison. Likewise, where the Judgement Debtor defaults appearance on notice to show cause, the executing Court*

*shall, if the Decree Holder so requires, issue a warrant of his arrest.*

*See Order XXI Rule 35 (2) of the code).*

In the circumstances of the above, it is presumed that the Judgement Debtor has failed to defend his case and show cause as to why he should not be committed to prison as a Civil Prisoner.

Pursuant to the provisions of Order XII Rule 35 of the Civil Procedure Code Cap 33 (R.E. 2019), I order that, unless the whole decretal amount of Tshs. 235,000,000/= is paid within 14 days from the date of service of this order. Failure to that, Ernest Charles Magesa, Joanrachel Johnson Kitunga, Nashea, Mchora Kitua, and Godson Meshack Simanga, Judgment Debtors should be arrested and detained as civil prisoners in Civil Prison in Tanzania for three (3) months in the execution of a Decree pronounced in Land Case No. 131 of 2019 before this Court. The Decree Holder to pay Tshs. 500,000/= only being subsistence allowance per each month the Judgement Debtor will be in prison.

Order accordingly.

Dated at Dar es Salaam this date 13<sup>th</sup> May, 2022.

A.Z.MGEYEKWA  
**JUDGE**  
13.05.2022

Ruling delivered on 13<sup>h</sup> May, 2022 in the presence of Mr. Tajiri, learned counsel holding brief for Mr. James Everister, learned counsel for the Decree Holders/ applicants.



*AZ*  
A.Z.MGEYEKWA

JUDGE

13.05.2022