

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAA

EXECUTION NO. 89 OF 2021

KURAIISHI IDRIS KOSKU 1ST DECREE HOLDER

ZIAUL-ISLAM ABDULAZIZ 2ND DECREE HOLDER

VERSUS

MARIAM Y. ABEID JUDGMENT DEBTOR

RULING

Date of Last order: 22/06/2022

Date of Ruling: 06/7/2022

A. MSAFIRI, J

This is an Application for Execution of a Decree brought under Order XXI Rule 35(1) of the Civil Procedure Code Cap 33 R.E. 2019 (the CPC). The Kuraishi Idris Kosku, the 1st judgment creditor applies for execution of this Court's award emanating from the Bill of Costs No. 15 of 2021 dated 09/08/2021 against Mariam Y. Abeid (the judgment debtor).

This application was heard orally on 22/6/2022 whereby the 1st judgment creditor had the legal services of Mr. Masinde Chisumo, learned advocate. The matter proceeded ex-parte against the judgment debtor. This is for the reason that the judgment debtor and her advocate failed to appear in court to defend the matter. From the beginning, the judgment debtor has been

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represented by Mr. Daniel Lisanga, learned advocate so she was aware of this application.

On 21/4/2022, the matter was set to be heard on 19/5/2022 in presence of parties including Mr. Lisanga. However, on 19/5/2022 the scheduled day for hearing, neither Mr. Lisanga, nor the judgment debtor appeared in Court. There was no any notice to the court explaining on their absence. The hearing was then adjourned to 22/6/2022. On the said date, again it was the hearing date, the judgment debtor and her advocate never appeared, and there was no any notice to the Court. The 1st judgment creditor and his advocate were present in Court whereby Mr. Chisumo prayed for ex-parte hearing. Having regard to the circumstances of the matter, and the fact that the judgment debtor was aware of the proceedings, the Court granted the prayer and ordered the hearing of the application to proceed ex-parte.

Submitting in support of the Application, Mr. Chisumo stated that this application originates from the ruling of the Bill of Costs No. 15 of 2021 whereby the Taxing Officer ordered the judgment debtor to pay Tshs. 1,730,000/- to the 1st judgment creditor.

Mr. Chisumo submitted further that, the judgment debtor has failed to pay the amount despite several efforts of the 1st judgment creditor to demand the said payment. That, the 1st judgment creditor have even tried to communicate with the judgment debtor's advocate but he has also failed. He stated that, the 1st judgment creditor then decided to file the present application for the judgment debtor to show cause why she should not be *Adls.*

imprisoned as a civil prisoner. He added that, the judgment debtor has not been attending the Court, and this shows that she has no intention of paying the said amount. He prayed that, the judgment debtor be sent to prison as a civil prisoner in default of payment.

Having considered the submission by the advocate for the applicant, it is my observation that, the right to commit a judgment debtor to jail as a civil prisoner is provided under Order XXI Rule 35 (1) of the CPC as hereunder;

"Rule 35 (1); Notwithstanding anything in these rules, where an application is for the execution of a decree of payment of money by arrest and detention as a civil prisoner of a judgment 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".

"35(2); Where appearance is not made in obedience to the notice, the court shall, if the decree holder so requires, issue a warrant of arrest of the judgment debtor".

It is the finding of this Court that the judgment debtor's failure to appear in Court despite being summoned to attend and being aware of the award and the proceedings of this application, compels this Court to issue an order of arresting and detaining her as a civil prisoner. It was pointed out by the *Aelle*.

counsel for the judgment creditor that, efforts has been made to compel the judgment debtor to pay the sum which was awarded by the Court, but the same has failed.

In the circumstances, it is presumed that the judgment debtor has failed to defend her case and show cause as to why she should not be committed to prison as a civil prisoner.

Basing on that, I hereby order the judgment debtor to pay the whole amount of Tshs. 1730,000/=, plus the interest of 5% on principal sum from the date of the ruling to the date of payment which should be effected within 14 days from the date of service of this order. The judgment debtor also shall pay the costs of the execution. Failure to that, Mariam Y. Abeid, the judgment debtor shall be arrested and detained as a civil prisoner in Civil Prison in Tanzania for a period of three months, in execution of a ruling of Bill of Costs No. 15 of 2021 before this Court.

The 1st decree holder to pay Tshs. 100,000/= only being subsistence allowance per each month the judgment debtor will be in prison.

Dated at Dar es Salaam this 06th day of July 2021



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

A. MSAFIRI,

JUDGE

22/6/2022