

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 337 OF 2023**

**TAHER H. MUCCADAM.....APPLICANT**

**VERSUS**

**DEOGRATIUS KALIMENZE DIRECTOR OF URBAN PLANNING  
MINISTRY OF LANDS, HOUSING AND HUMAN SETTLEMENT  
DEVELOPMENT.....1<sup>ST</sup> RESPONDENT**

**LINUS F. SHAYO.....2<sup>ND</sup> RESPONDENT**

**OMARY KUMBILAMOTO MAYOR OF  
THE CITY COUNCIL OF DAR ES SALAAM.....3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**RULING**

*25/07/2023*

**L. HEMED, J.**

On 15<sup>th</sup> day of May 2023, the Applicant herein TAHER H. MUCCADAM lodged the instant application against DEOGRATIUS KALIMENZE, DIRECTOR OF URBAN PLANNING MINISTRY OF LAND, HOUSING AND HUMAN SETTLEMENT DEVELOPMENT; LINUS F. SHAO; OMARY KUMBILAMOTO

MAYOR OF THE CITY COUNCIL OF DAR ES SALAAM; and THE ATTORNEY  
GENERAL seeking for the following orders: -

*"1. That this Honourable Court be pleased to order the appearance of Deogratus Kalimenze the Director of Urban Planning and his subordinate Linus F. Shao and Omary Kumbilamoto to show cause why they should not be rested and detained to imprisonment for contempt or disobedience of a lawful order of the court dated the 29<sup>th</sup> day of September, 2009.*

*2. That this Honourable Court be pleased to hold Deogratus Kalimenze the Director of Urban Planning in the Ministry of Lands, Housing and Human Settlement Developmant jointly with her (sic) subordianate Linus F. Shao and Omary Kumbilamoto the Mayor of the City of Dar es Salaam in contempt or disobedience of a lawful order of the court issued on the 29<sup>th</sup> day of September, 2009 and commit them to imprisonment.*

*3. That this Honourable court be pleased to rescind or annul or cancel the 1<sup>st</sup> Respondent's decision dated the 5<sup>th</sup> day of November, 2010 issued to the Applicant.*

*4. costs incidental to this Application abide by the result of this Application.*

*5. Any other or further relief this Honourable Court may deem fit and just to grant in the interest of justice."*

The Application was supported by the affidavit deposed by the applicant himself. By 25<sup>th</sup> July 2023, the respondents were yet to file counter affidavits. However, the learned State Attorney, Ms. Lilian Mirumbe, who was acting for the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents filed the Notice of Preliminary Objection to the Application on the point of law thus: -

*"...the application is untenable and barred in law for lack of execution proceedings"*

On 25<sup>th</sup> July, 2023 when the matter came for mention, Ms. Lilian Mirumbe and Mr. Francis Wisdom, state attorneys appeared to represent the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents, while the applicant appeared in person. On the material date, Ms. Lilian Mirumbe notified the court about the pendency of the preliminary objection. She was of the view that since the applicant has never applied for execution of the decree, the application at hand cannot stand.

In reply thereto, the applicant stated that there is another Misc. Land Application No. 336 of 2023 in which he is seeking for extension of time to execute his Decree. He prayed to concede to the preliminary objection. Having heard the submissions made by both parties, I made effort to read the affidavit in support of the application and realized that, the Applicant is

the Decree Holder in Land Case No. 107 of 2006 dated 29<sup>th</sup> September, 2009. In this application, the applicant seeks to move this court to detain the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents as Civil Prisoners for contemp of the order of this court in the Decree of this court he holds.

I have also noted that the applicant has never applied to execute the said Decree, only that, since 12 years within which to execute the decree have lapsed, there is pending Misc. Land Application No. 336 of 2023 seeking for leave to execute it out of time. The question is whether this application is entertainable in the absence of execution proceedings.

Detention of the judgment debtor in prison is among of the known modes of execution provided under Order XXI Rule 35 of the Civil Procedure Code. [Cap 33 R.E 2019]. However, the application for detention must be preceded by an Application for execution under Order XXI Rule 9 of the Civil Procedure Code, (supra) which Provides thus:

*"when the holder of a decree desires to execute it, he shall apply to the court which passed the decree..."*

As pointed out by Ms. Mirumbe and conceded by the Applicant, the decree holder who is the applicant in this matter, has never applied to

execute the alleged decree. In the absence of the application for execution, the applicant is precluded from applying for detention of the respondents.

The applicant while conceding to the objection he informed the court that there is an application for extension of time to apply for execution of the alleged Decree. Since the Application for leave to execute the said Decree out of time has not been determined, this application for detention of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents becomes premature.

In the upshot, this application deserves an order to strike out. The entire application is thus struck out with no orders as to costs. It is so ordered.

**DATED** at **DAR ES SALAAM** this 25<sup>th</sup> July, 2023.



  
**L. HEMED**  
**JUDGE**