

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**EXECUTION NO. 87 OF 2022**

**LUSAKO MATHIAS MWAMAKULA.....PLAINTIFF/DECREE HOLDER**

***VERSUS***

**MKONGOWO TRADING CO. LTD.....1<sup>ST</sup> DEFENDANT/JUDGMENT DEBTOR  
AMISA MBAGA @ JESCA JOHN SHANGALI.....2<sup>ND</sup> DEFENDANT/JUDGMENT DEBTOR**

**RULING**

27/07/2023 to 02/08/2023

**E.B. LUVANDA, J**

Following a decree for award of general damages a sum of 50,000,000/= decreed in favour of the Decree Holder above named against the Judgment Debtors named above, the Decree Holder preferred an application for execution of a decree, seeking for assistance of this Court lifting corporate veil in respect of the First Judgment Debtor managing Directors namely Peter Rodrick Ngowo and Halima Rodrick Ngowo including the Second Judgment Debtor by calling them to show cause why they cannot be detained as civil prisoner for failure to satisfy the court's decree dated 05/02/2021.

The court upon receiving the application, issued several notices summoning the Judgment Debtors to appear and show cause why they should not be detained as civil prisoner for failure to satisfy a balance of a decree Tshs 36,856,000 as indicated in the application for execution, including service by publication in Mwananchi News paper on 30/03/2023, invain. Hence the matter proceeded in their absence.

Mr. Mutakyamkirwa Philemon learned Counsel for Decree Holder, submitted that the right to commit the judgment debtor as a civil Prisoner is provided under sections 42 to 47 and rules 28, 35, 39 of Order XXI of the Civil Procedure Code, Cap 33 R.E. 2019. He cited the case of **The Grand Alliance Limited vs. Mr. Winfred Lucas Tarimo & 4 Others**, Civil Application No. 187/2019, C.A. T. page 12, for a proposition that for committing the judgment debtor to prison, there must be an application for execution of a decree for payment of money by arrest and detention in prison of judgment debtor. He submitted that several summons have been issued requiring the First and Second Judgment Debtors to satisfy the decree, invain, attributing it to unwingliness to satisfy the decree. He cited the case of **Karori Chogoro vs. Waitihache Merengo**, Civil Appeal No. 164/2018 [2022] TZCA 83. He submitted that the first Judgment Debtors

Managing Director and Second Judgment Debtor be arrested and detained as civil prisoner.

In the case of **Yusuf Manji vs. Edward Masanja & Another**, Civil Appeal No. 78/2002, C.A.T at Dar es salaam, at page 6, the apex Court ruled, I quote,

*"In our view, and as correctly held by the learned Judge, in certain special and exceptional circumstances, the court may go beyond the purview of this principle by what was described in Salomon (supra) lifting the veil.*

Herein, the First and Second Judgment Debtor have been served with notice to show cause by way of publication, but still neglected to heed and appear to show cause. By necessary implication the First and Second Judgment Debtor have refused to pay the remained balance of the decree. The acts of the Judgment Debtors, warrant both lifting veil in respect of the First Judgment Debtor but also issuance of warrant of arrest for them to be committed as civil prisoner in respect Peter Rodrick Ngowo and Halima Rodrick Ngowo who are named to be Managing Directors of the first Judgment Debtor Amisa Mbagala @ Jesca John Shangali (Second Judgment Debtor).

In the resultant, I direct for warrant of arrest be issued against **Peter Rodrick Ngowo, Halima Rodrick Ngowo and Amina Mbaga @ Jesca John Shangali**, for them to be committed as civil prisoner.

The application is granted.

E.B. LUVANDA  
**JUDGE**  
02/08/2023

