

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

EXECUTION NO. 80 OF 2022

(Arising from Bill of Costs No. 160 of 2019 and Land Case No. 413 of 2016)

EXIM BANK (T) LIMITED APPLICANT/ DECREE HOLDER

VERSUS

NATIONAL FURNISHERS LIMITED ... 1ST RESPONDENT/ JUDGMENT DEBTOR

KAWA APARTMENTS LIMITED 2ND RESPONDENT/JUDGMENT DEBTOR

RULING

Date of Last Order: 28.02.2023

Date of Ruling: 28.02.2023

A.Z.MGEYEKWA, J

This is an Application for Execution brought under Section 42 (c) and Order XXI Rule 35, (1) (2) of the Civil Procedure Code, Cap.33 [R.E 2019]. The applicant applies for 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. 42,020.000/= 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 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 the application before I convened in composing the judgment, I noted that the Decree Holder is seeking this Court to detain the Judgment Debtor as a civil prisoner while they did not exhaust the other mode of execution.

Ms. Patricia, Decree Holder's counsel was brief, she submitted that the Decree Holder is praying for execution whereas they are seeking this Court to detain the Judgment Debtor as a civil prisoner because there is an order of this Court that granted costs to the Decree Holder and thus, they want to execute the Court order.

I have heard Ms. Patricia's submission, 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 with leave to refile. No order as to the costs.

Order accordingly.

Dated at Dar es Salaam this date 28th February, 2023.




A.Z.MGEYEKWA

JUDGE

28.02.2023

Ruling delivered on 28th February, 2023 in the presence of Ms. Patricia Tarimu, learned counsel for the Decree Holder.




A.Z.MGEYEKWA

JUDGE

28.02.2023