

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM SUB - REGISTRY)

AT DAR ES SALAAM

CIVIL APPLICATION NO. 31 OF 2022

(Arising from Civil Case No. 205 of 2019)

FREDRICK BONIPHAS KYANDODECREE HOLDER

VERSUS

EQUITY BANK TANZANIA LIMITED.....JUDGMENT DEBTOR

RULING

Date of Last Order: 13/12/2023.

Date of Ruling: 16/04/2024.

E.E. KAKOLAKI, J.

This ruling seeks to address the issue as to whether the deed of satisfaction executed and filed by the parties herein should be recorded as certified, in execution of the Court decree and this file be closed.

Briefly the judgment debtor filed in this Court an application for arrest and detention as civil prisoner the Managing director of the judgment debtor as a mode of execution of this Court's decree in Civil Case No. 205 of 2019 (ex-parte judgment), issued in his favour. The total claimed money is Tshs. 370,000,000 plus costs of execution process. In pendency of this application

the judgment debtor had also preferred an appeal to the Court of Appeal against the decree of this Court in the above cited civil case, in which when served with the copy of this application filed a counter affidavit in opposition. When the matter was called for mention on 01/11/2022, both parties intimated to the Court their willingness to settle the decree out of Court and their prayer was cordially granted to avail them with time for negotiations, before the prayer for further adjournment of the matter was advanced. On 13/11/2022, a report was made to the Court by the parties on settlement agreement of execution of the decree and the filing in Court of the deed of satisfaction of decree on 03/11/2022 in terms of Order XXI Rule 2(1),(2) and (3) of the CPC and further that, the judgment debtor was still working on execution of part of her obligations as agreed terms in the deed.

It was agreed in the said deed that, the decretal amount that had stood at Tshs. 368,000,000/- on the date of execution of the deed would be reduced to Tshs. 350,000,000/- and paid in full to the decree holder, as its 50% which is Tshs. 175,000,000/- would be paid to the decree holder's account (as Managing director) being a working capital in his company Majaribu Trading Company, in order to enable him continue servicing the loan facility advanced to the said company while the remaining 50% Tshs. 175,000,000/-

retained by the judgment debtor and used to reduce the loan debt. It was also agreed that, the decree holder would surrender to the judgment debtor the original title deed with C.T No. 55212, L.O No. 213121, Plot No. 4 Block 4 Magomeni Kinondoni Municipality in the name of Sophia Fundikila at the time of signing of the said deed of settlement. In furtherance to agreement that, the judgment debtor covenanted to withdraw her appeal pending before the Court of Appeal against the decree subject of this application.

When the matter was called on for recording satisfaction of the decree on 28/03/2023 as per the filed deed and in terms of the provisions of Order XXI Rule 2(1) of the CPC, the decree holder who had earlier on appeared in person and certified to the court of being paid as per the terms of the deed of satisfaction, informed the court that they were yet to finalise their settlement hence sought adjournment of the matter in order to engage a new advocate as the former one Mr. Daudi Mkilya who prepared and witnessed the signing of deed of satisfaction of the decree had parted terms with him, the prayer which was granted by issuing adjournment several times.

On the 13/07/2023, the decree holder who appeared through new advocate Mr. Rajabu Mrindoko, informed the Court that there was misunderstanding

on terms of the deed of satisfaction of the decree executed and filed in Court as they were still working on the restructuring of loan payment that formed the basis of execution of the said deed. It was claimed that, during the round table discussion between the parties, the judgment debtor had agreed to forego or waive the accrued interest on the decree holder's principle loan debt in exchange of waiver of costs in the process of execution of decree but to the contrary, after signing and filing the said deed in court, the later was served with the loan restructuring letter retaining the existing loan interest. The decree holder therefore filed the affidavit to show cause as to why deed of satisfaction of decree should not be recorded as prayed by the judgment debtor, until when the issue of removal of interests in the restructured loan payment letter is settled. The affidavit was countered by the judgment debtor in the counter affidavit duly sworn by one Prisila Clement, her principal officer plus that of Daudi Clement Mkilya (Former decree holder's advocate) in which the decree holder made reply thereto.

As the prayer by the decree holder for the Court not to record the deed was vehemently objected by the judgment debtor, this Court ordered parties to address it in writing as to why the said executed and filed deed of satisfaction

of decree by the parties should not be recorded, the reason of which this ruling is crafted.

The filing of submissions' order was adhered to by both parties as the decree holder hired the services of Mr. Rajabu Mrindoko while the judgment debtor enjoying the services of Mr. Godwin Nyaisa, both learned counsel.

Having gone through the decree holder's affidavit as to why the deed of satisfaction of the decree should not be recorded, the two counter affidavits as well as reply affidavit and the written submission from both parties, the issue before the Court for determination as alluded to above is whether the deed of satisfaction executed and filed by the parties herein should be recorded as certified, in execution the Court decree in whole and the filed be closed.

It is Mr. Mrindoko's submission that, the deed of satisfaction of the decree aside, there was oral agreement based on the out Court settlement as referred in annexure FK-1 to the affidavit showing cause as to why the deed should not be recorded or certified that, the judgment debtor will restructure the loan payment terms to Majaribu Trading Co. Limited owned by the decree holder by offering waiver of interest attached to the said loan which

was breached when the later retained the same in the loan structure, hence affected consent of the decree holder in execution of the deed of satisfaction of the decree as there was no free will in terms of section 14 of the Law of Contract Act, [Cap. 345 R.E 2019]. The submission was strenuously resisted by Mr. Nyaisa who in essence held the view that, there was no such agreement for waiver of interest as the same if existed would have been formed part of the terms of deed of satisfaction. Citing to the Court the case of **UMICO Limited Vs. SALU Limited**, Civil Appeal No. 91 of 2015 (CAT-unreported), Mr. Nyaisa impressed upon the Court to find that, decree holder's claim was an afterthought, hence the deed should be recorded as certified and file closed since once the agreement is reduced in writing no oral evidence can contradict the same.

It is the law in terms of Order XXI Rule 2(1) of the CPC that, where the decree is compromised by the parties and money of any kind is paid out of court or adjustment of the decree made in whole or part, the decree holder shall certify such payment to court for recording that, the decree has been whole or partly satisfied. And when the decree holder fails to certify them under Order XXI Rule 2(2) of the CPC, then the decree holder is entitled to apply to the Court for issuance of notice to the decree holder to show cause

as to why the said satisfaction should not be recorded, as the payment or adjustment not recorded has no value and shall not be recognised by the executing Court. To allow a fair determination of the above issue it is imperative that the said Order XXI Rule 2(1),(2) and (3) of the CPC be reproduced as I hereunder do:

2.-(1) Where any money payable under a decree of any kind is paid out of court or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the court whose duty it is to execute the decree and the court shall record the same accordingly.

(2) The judgment debtor also may inform the court of such payment or adjustment and apply to the court to issue a notice to the decree-holder to show cause, on a day to be fixed by the court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any court executing the decree.

In this matter there is no dispute as can be deduced from the deed of satisfaction of decree, decree holder's affidavit to show cause why the deed should not be recorded and the two counter affidavits by the judgment debtor and advocate Daudi Clement Mkilya that, both parties jointly drew and filed in Court the said deed of satisfaction of decree on 03/11/2022. And that, in terms of paragraphs 1.2, 1.3, 1.4 and 1.7 of the deed of satisfaction of the decree that, the judgment debtor would pay the decree holder Tshs. 350,000,000/- in full satisfaction of the decree and that upon execution of such deed the decree holder would have no further claims against the judgment debtor. And further that, 50% of the amount would be retained and used to repay part of the loan extended to the decree holder's company one Majaribu Trading Company Limited while the remaining 50% Tshs. 175,000,000/- paid to him as working capital to enable him continue to service the loan. It was also covenanted by the decree holder to surrender to the judgment debtor the title deed with CT No. 55212, L.O No. 213121, Plot No. 4 Block 4 Magomeni, Kinondoni Municipality in the name of Sophia Fundikira at the time of signing of the deed of settlement. Further to that, it is undeniable fact that, the said agreed money was paid to the decree holder the fact which he confirmed to the court on 28/02/2023, the day when he

also claimed to have pending issue with the judgment to be resolved before the deed of satisfaction of the decree is recorded.

With all uncontroverted facts I am unable to embrace Mr. Mrindoko's submission that, there was existence of oral agreement between the parties as part of out of court settlement for waiver of loan interest during restructuring of loan payment schedule and therefore hold that, the claim is an afterthought as rightly submitted by Mr. Nyaisa. I firmly hold that view as if waiver of loan interest was meant by the parties to be part of the out of court settlement, then the same would have been included in the deed of satisfaction of decree subject of this application and therefore binding to the parties. It is my conviction that annexure FK-1 relied on by Mr. Mrindoko to support his argument that there was oral agreement based on out of court settlement, does not form part of the written agreement rather it is an annexure to the letter directed to the decree holder restructuring the terms of loan facility, stating that the restructuring request is supported by out of court settlement by the decree holder. Meaning that, consideration for loan repayment restructuring terms resulted from the out of court settlement as there is nothing in writing proving to this court's satisfaction that, the judgment debtor had agreed to waive loan interest to Majaribu Trading

Company Limited owned by the decree holder as Mr. Mrindoko would want this Court to believe. I find solace in the Court of Appeal decision in the case of **UMICO Limited** (supra) when deliberating on the value of evidence of the agreement reduced in writing against oral agreement, where it had this to say:

"... it is trite law that generally if the parties in dispute had reduced their agreement to form a document, then no evidence of oral agreement shall be admitted for the purpose of contradicting, varying, adding to or subtraction from its terms. (see ss. 100 and 101 of the Evidence Act, Cap. 6 R.E 2002)."

In view of the above findings I dismiss Mr. Mrindoko's submission that, since the judgment debtor refused to waive loan interest in favour of the decree holder's company the claim which I have already found to be an afterthought then he executed the deed of satisfaction of the decree without consent (free will) in terms of section 14 of the Law of Contract Act. I so do as there is no evidence suggesting that there was coercion, fraud, misrepresentation, undue influence or mistake of fact when the deed was executed by the decree holder, instead as held above the claim of waiver of loan interest was fronted by the decree holder as an afterthought.

Since the fact that, all terms of agreement in the deed of satisfaction of decree subject of this application were satisfied in whole by effecting payments as agreed and since the decree holder in terms of paragraph 1.7 of the deed covenanted to have no further claims whatsoever against the judgment debtor, this court is satisfied that the decree in respect of Civil Case No. 205 of 2019, was satisfied in whole and I so find.

Consequently the deed of satisfaction of the decree in respect of Civil Case No. 205 of 2019 by this Court is recorded and ordered as certified by the decree holder, the effect of which is to bring to an end execution of the decree. It is further ordered that this execution file be closed.

Each party to bear own costs.

Order accordingly.

Dated at Dodoma this 16th April, 2024.



E. E. KAKOLAKI

JUDGE

16/04/2024.

The Ruling has been delivered at Dodoma today on 16th day of April, 2024, via video conference in the presence of Mr. Rajabu Mrindoko, advocate for

the decree holder, Ms. Beatha Telli, advocate for the judgment debtor and Ms. Eva Msuya, Court clerk.



E. E. KAKOLAKI
JUGDE
16/04/2024.

