

TANZANIA / JUDGMENT

hosein dhahabu vs sunlon general enterprises another 2022 tzhclandd 12732 8 december 2022

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TANZLIIDECIDED
8 December 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT PAR ES
SALAAM EXECUTION NO. 128 OF 2022 (Originating from Land Case No. 275 of 2009) HOSEIN
DHAHABU..... APPLICANT/DECREE HOLDER VERSUS SUNLON GENERAL
ENTERPRISES & BUILDING CONTRACTORS RESPONDENT/JUDGMENT DEBTOR

RULING

Date of Last Order: 08.12.2022 Date of Ruling: 08.12.2022 A.Z.MGEYEKWA, J This is an Application for Execution of a Decree brought under Order XXI Rules 28, 35 (1) and (2) of the Civil Procedure Code, Cap. 33 [R.E 2019]. The applicant applies for execution of the award against Judgment Debtors. The applicant prays for this court to order the Judgment Debtor to pay the i Decree Holder a sum of Tshs. 224,164,540/= and costs of execution and in default thereof, the Judgment Debtors and detained as a Civil Prisoner. Suo motu I prompted the counsel for the Decree Holder at the very outset to address the Court whether they have exhausted other modes of execution before choosing to arrest and detain the Judgment Debtors. The applicant's counsel was brief, he conceded that the applicant did not exhaust the first mode of execution, thus, he prayed to withdraw the instant application with leave to refile a proper application. I have heard the counsel's submission, and from the outset, I hold that the counsel for the Decree Holder has opted to combine two prayers without exhausting the first mode of execution. It is my view that the Decree Holder was required to enforce the award vide other modes of execution, instead of assuming that other modes of execution cannot bear fruits. It is worth noting that 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:- 2 "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- fa) 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. In the upshot, I proceed to mark this application withdrawn with leave to refile. Order accordingly. Dated at Dar es Salaam th.ia.date,08th December, 2022. [EKWA E K2022 Ruling delivered on 08th December, 2022 in the presence of Mr. Benedict Pius Chang’ambwe, counsel for the Decree Holder. EKWA
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