

TANZANIA / JUDGMENT

ABDALLAH JUMA

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27 March 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM MISC. LAND APPLICATION NO. 31441 OF 2024 (Arising from the application for
execution No. 216 of 2022 and application No. 186 of 2023 both originated from original Land
Application No.68 of 2018) ABDALLAH JUMA ALLY.....APPLICANT
VERSUS AJAY AMARSHI CHAVDA.....1ST RESPONDENT RESHMA AJAY
CHAVDA.....2ND RESPONDENT RATNA JITIN
CHAVDA.....3RD RESPONDENT

RULING

12th February & 27th March 2025 L.HEMED,J Abdallah Juma Ally is the Applicant in the instantaneous application which is made under section 41 and 43(1) and (2) of the Land Disputes Courts Act [Cap.216 RE 2016] and section 95 of the Civil Procedure Code [Cap.33 RE 2019]. It is an application for revision that emanates from execution No. 216 of 2022 and Application No. 186 of 2023, both originated from Land Application No.68 of 2018. The Applicant seeks for the following orders which are reproduced verbatim hereunder: - “ 1)That this honorable court be pleased to call for and examine the records of proceedings of the trial tribunal, 1 Ilala District Land and Housing Tribunal(sic) in application for execution No. 216 of 2022 and application No. 186 of 2023 and certify(sic) itself as to the correctness, legality and or propriety of the decisions and orders made therein with regard to the interpretation and otherwise of the provision of clause 4 of the consent settlement decree dated 21st January, 2021.

- 2) That this honorable court be pleased to determine and pronounce the clear interpretation of clause 4 of the consent settlement decree and proceed to determine the status of the payment of Tshs. 70,000,000/= made to the respondents but the trial tribunal failed to recognize. Unclear basis of claiming payment of Tshs. 200,00,000/= instead of Tshs. 130,000,000/= as the balance. 3)That this honourable court be pleased to quash and nullify order(s) of the trial Tribunal directing and or ordering the applicant herein to pay full decretal amount of Tshs. 200,000,000/= instead of the remaining balance of Tshs. 130,000,000/= following failure of the trial tribunal to take into consideration the initial payment of Tshs.70,000,000/= made by the applicant to the respondents herein. 4)That this honourable court be pleased to issue an order directing the immediate release of the Applicant 2 herein based on the terms and conditions to be set by the court.

- 5) The respondent be ordered to bear the costs of this application.
- 6) Any other order(s) this honourable Court may deem it fit to grant.” The application has been supported by the affidavit of the Applicant and resisted by the respondents. The matter was called on 12th February 2025 for necessary orders. On the particular date, the Applicant was duly represented by Mr. Kung’e Wabeya, learned advocate while the respondents enjoyed the legal service of Mr. Diumesh Mawji, learned advocate. On the date the matter was called for necessary orders it was agreed and directed the application to be argued by way of written submissions. The filing schedule was as follows: -
- i. Submissions in chief on or before 25th February 2025; ii. Reply submissions by 10th March 2025; and iii. Rejoinder if any by 17th March, 2025. 3 On 18th March 2025 when I called up the case file for purposes of composing ruling, I only found the submissions in chief that was filed by the Applicant. In other words, the respondents’ reply submissions could not be found in the e-file which implies that they opted not to file it. This ruling is thus premised on the submission of the Applicant and the affidavits on record. Before delving into determining the matter at hand on merit, let me give a brief background of it. In 2018, the respondents herein, Ajay Amarsh Chavda, Reshma Ajay Chavda and Ratna Jitin Chavda, instituted at the District Land and Housing Tribunal for Ilala, Land Application No.68 of 2018 against the herein Applicant and six (6) others. In the said suit the respondents herein were claiming ownership of an apartment on the 1st floor (left hand and right-hand side on Plot No. 26 Block “63” Mvita/ Ungoni stret Kariakoo Area, and on the 2nd floor, left hand side on Plot No.26, Block “63” Mvita/Ungoni Street – Kariakoo Area allegedly to have been purchased from the Applicant herein. While the matter was still pending before the trial Tribunal, on 25th November, 2020, the parties executed the Deed of Settlement and recorded it on 21st January, 2021. In the said deed of settlement which 4 was later adopted as Consent Decree, it was agreed that the Applicant herein was to pay the respondents herein an amount of TZS. 200,000,000/= in three equal instalments as follows: - “(i) Tanzania shillings One Hundred Million (Tshs. 100,000,000/=) on or before 31st March 2021 being the 1st instalment sum. (ii) Tanzania shillings Fifty Million (Tshs. 50,000,000/=) on or before 31st June 2021. (iii) Tanzania shillings Fifty Million (Tshs. 50,000,000/=) on or before 30th September, 2021 being the 3rd instalment of the settlement sum.” In the consent decree it was agreed and ordered that in event of default by the Applicant (who was the 1st Respondent during trial) in repayment of any instalment of the settlement sum, the Applicant would be liable for payment of the settlement sum forthwith. On 2nd July 2021 he paid the respondents the amount of TZS. 70,000,000/= contrary to the agreed and ordered modality of payment. This prompted the respondents to file an application for execution No.216 of 2022 demanding for payment of the decretal sum of TZS 200,000,000/=. The Applicant herein contended before the executing 5 court that he had already paid the amount of TZS. 70,000,000/= and that he was liable to pay the balance of TZS. 130,000,000/=. However, in its ruling, the Tribunal interpreted clause 4 of the consent decree that since the Applicant had defaulted the instalment, he was liable to pay the entire settlement sum of TZS 200,000,000/=. Kabago, the Tribunal Broker was appointed to execute the consent decree. The Applicant could not

manage to pay the said decretal sum of TZS 200,000,000/= hence the respondents herein successfully moved the tribunal to detain the Applicant as Civil Prisoner vide Misc. Application 186 Of 2023 until payment in full the amount of TZS. 200,000,000/=. He was eventually detained at Segerea Prison hence this application. Having read the submission in support of the application together with the affidavits, I have noted that the Applicants seeks this court to revise the execution order in Application for Execution in Misc. Application No. 216 of 2022 which ordered him to pay the amount of TZS 200,000,000/- instead of the balance of TZS 130,000,000/=. The applicant also seeks for an order of this court to release him from prison. 6 According to the records of the trial Tribunal, it is not in dispute that the Applicant defaulted payment of the decretal sum of TZS 200,000,000/=. He could not pay according to the agreed and directed instalments. It is also on record that the Applicant paid to the respondents the amount of TZS 70,000,000/=. The question that arises is whether upon default the Applicant was obliged to pay the entire amount of TZS 200,000,000/-. I have revisited the consent decree, particularly in clause 4 and found it providing as follows:- “4. That in event of default by the 1st respondent in repayment of any instalment of the settlement sum, the 1st respondent shall be liable for payment of the settlement sum forthwith. For avoidance of doubts, it is hereby agreed that any default in repayment of an instalment of the settlement sum, the applicants shall be entitled to payment of the entire settlement sum from the 1st respondent.” [Emphasis added] The above clause was interpreted by the trial tribunal to mean that upon default of any instalment, the Applicant was obliged to pay the entire settlement sum, that’s TZS 200,000,000/=. My firm opinion is that the 7 above clause did not intend to injure and or burden any party, the applicant inclusive. I have just tried to think if the interpretation of the executing court was correct then, assume the Applicant would have defaulted only the last instalment of TZS 50,000,000/= after having paid the amount of TZS 150,000,000/=. would the Applicant be obliged to pay the entire settlement sum of TZS 200,000,000/= without considering the amount paid? One among the qualities of any good judgment and decree, including the consent decree is being fair to the parties. Excluding the amount paid prior to default in payment of instalments erodes fairness of the consent decree. The words “...any default in repayment of an instalment of the settlement sum, the applicants shall be entitled to payment of the entire settlement sum from the 1st respondent”, was referring to the outstanding amount of the settlement sum. The interpretation of clause 4 is such that upon default the Applicant who was the 1st Respondent would be obliged to pay the whole amount of the balance of the settlement sum in lumpsum. In other words, clause 4 had intended waive the right to pay by instalment upon default. The fact that the Applicant had already paid the amount of TZS 70,000,000/= then 8 the Applicant was to pay in lumpsum the balance of TZS 130,000,000/- and not the whole amount of TZS 200,000,000/= as was ordered by the executing court. Let me now turn to the prayer for the applicant to be released from prison where he was detained as civil prisoner following his failure to pay the amount of TZS 200,000,000/=. In the first place, I wish to point out that detention of the judgment debtor as civil prisoner is among the modes of execution of a decree. This mode which is governed by sections 44, 46 and Order XXI of the Civil Procedure Code [Cap.33 R.E 2019] is normally invoked where the

judgment debtor fails to pay the decretal sum. In the instant case, the Applicant has paid only TZS 70,000,000/= out of the decretal sum of TZS 200,000,000/= which implies that he owes the respondents the unpaid amount of TZS 130,000,000/=. Before the executing court, the Applicant was disputing the amount of TZS 200,000,000/= which he was ordered to pay and the same was the basis of his detention. In my view, having found that the Applicant was to pay the amount of TZS 130,000,000/= then his imprisonment becomes invalid unless the Applicant refuses to pay the balance of TZS 130,000,000/=. 9 I have also noted from the order of the District Land and Housing Tribunal for Ilala in Misc. Application No.186 of 2023 made to commit the Applicant to prison was such that he is to remain into custody unless the whole decretal sum of TZS 200,000,000/= is paid in full. The order reads as follows: - “Kwa sasa Namwamuru OCD Ilala ampeleke Gereza la Segerea mdaiwa kuwa mfungwa wa madai mpaka atakapolipa Tshs. 2000,000,000/=kwa wadai au amri nyingine za Baraza hili.” [Emphasis added] Translated as:- OCD Ilala is commanded to take the judgment debtor to Segerea prison to serve as civil prisoner until he pays the decree holders TZS.200,000,000/=or otherwise ordered by this Tribunal. The above order implies that the Applicant who is the judgment debtor has to remain perpetually in custody for life if he fails to furnish 10 payment of TZS 200,000,000/=. The question is whether such detention order for unspecified time is permissible under the law governing civil detentions? The answer clearly found under section 46(1) of the Civil Procedure Code [Cap.33 R.E 2019] which provides as follows: - “46.-(1) Every person detained as a civil prisoner in execution of a decree shall be so detained-

- (a) Where the decree is for the payment of a sum of money exceeding one hundred shillings, for a period of six months; and
- (b) In any other case, for a period of six weeks: Provided that, he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be...” [Emphasis added]. From the above provision, the maximum period to detain a person as civil prisoner is six months. Therefore, an order to detain a person as a civil prisoner has to specify the period for such person to be detained. In other words, an order that detains a person for unspecified period 11 contravenes the provisions of section 46 of the Code. This being the position, I find that the order of the District Land and Housing Tribunal to detain the Applicant as civil prisoner for unspecified period, is illegal. In the final analysis I proceed to grant the application with the following orders: -
 - 1. The execution order that the Applicant to pay the entire settlement sum of TZS 200,000,000/= is quashed;
 - 2. The Applicant to pay the outstanding amount of the settlement sum of TZS 130,000,000/= in lump sum;
 - 3. The order to detain the Applicant as civil prisoner is quashed;
 - 4. The Applicant to be released from prison forthwith; and

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5. Each party to bear its own costs. 12 Order accordingly. DATED at DAR ES SALAAM this 27th March, 2025. L. HEMED JUDGE 13
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