

TANZANIA / JUDGMENT

# domina kagaruki vs farida f mbarak 2 others 2022 tzhclandd 12786 8 december 2022

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8 December 2022

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IN THE UNITED REPUBLIC OF TANZANIA IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM APPLICATION FOR EXECUTION NO. 130 OF 2022 (Arising from Taxation No. 50 of 2021 Arising from Civil Reference No. 14 of 2019) DOMINA KAGARUKI..... APPLICANT VERSUS FARIDA F. MBARAK..... 1stRESPONDENT FARID AHMED MBARAK.....2ndRESPONDENT ELIUS A. MWAKALINGA..... 3rd RESPONDENT

## 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 10 (2) (i) & (iii) of the Civil Procedure Code, Cap. 33 [R.E 2019]. The i applicant applied for the execution of the award against Judgment Debtors. The applicant prays for this court to order the Judgment Debtor to pay the Decree Holder a total sum of Tshs. 3,395, 000/= and in default thereof, the Judgment Debtors be detained as a Civil Prisoner. Suo motu I prompted Mr. Rwebangira Eustace Rwebangira, 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 submitted that they want this Court to call the Judgment Debtors to show cause and order them to pay Tshs. 3,395, 000/= and in default thereof, this Court to arrest and detain the Judgment Debtors as civil prisoners. 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 2 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- 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 this date 15th December, 2022. t A.Z.MGEYEKWA JUDGE 15.12.2022 3 Ruling delivered on 15th December, 2022 in the presence of Mr. Rwebangira Eustace Rwebangira, learned counsel for the Decree Holder. 4

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**CASE PAGE** <https://chat.esheria.ai/case-law/tanzania/domina-kagaruki-v-farida-f-mbarak-ExecutionofDecree-tanzlii-2022--6a3ea52b3b1caa9129824067>

Prepared on 14 October 2026 · Esheria