

TANZANIA / JUDGMENT

leonard reed ms african company ltd vs alex msama mwita 2022 tzhclandd 12463 28 october 2022

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28 October 2022

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM APPLICATION FOR EXECUTION NO. 93 OF 2022 (Originating from Land Case No. 60 of 2019 of the High Court of Tanzania Land Division at Dar es Salaam) LEONARD REED M/S AFRICAN COMPANY LTD.....APPLICANT/DECREE HOLDER VERSUS ALEX MSAMA MWITA.....RESPONDENT/JUDGMENT DEBTOR

RULING

Date of Last Order: 28.10.2022 Date of Ruling: 28.10.2022 A.Z.MGEYEKWA, J This is an Application for Execution of a Decree brought under Order XXI Rule 35 (1) of the Civil Procedure Code [R.E 2019]. The applicant applies for execution of the award dated 28th March, 2022. The applicant prays for this court to order the Judgment Debtor to pay the Decree Holder a sum of Tshs. 1 50,000,000/-, costs of execution and in default thereof, the Judgment debtors Alex Msama Mwita 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 application before I convened in composing the judgment, I noted a point of law that the application was prematurely filed before this Court. The applicant's counsel was brief, Mr. Mafuru submitted that the application is properly filed before this Court since one mode of execution is the arrest and detention of the Judgment Debtor to make him pay the damage to the tune of Tshs. 50,000,000/= and eviction. To support his submission he referred this Court to the provision of section 42 (c) and Order XXI Rule 28 of the Civil Procedure Code Cap. 33 [R.E 2019], Mr. Mafuru also cited the case of Mohamed H. Nassoro v Commercial Bank of Africa (T) Limited, Civil Application No. 161 of 201. He submitted that the applicant does not know the Judgment Debtors' properties thus it is for him to show cause and explain how he will pay the Tshs. 50,000,000/=. He urged this Court to facilitate the execution against the Judgment Debtor by arresting and detaining him as a civil prisoner. 2 I have heard Mr. Mafuru'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 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. ” 3 See the case of Yusuf Manji v Edward Masanja and Abdallah Juma, Civil Appeal No. 789 of 2002 CAT (unreported). Guided by the above provision of law, it is clear that the application is lodged prematurely before this Court. The cited case of Mohamed H. Nassoro (supra) is distinguishable from the case at hand because I am in the position to exercise my discretion power by opting for other modes of execution before ordering the last resort of execution. 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. Ruling delivered on 28th October, 2022 via audio teleconferencing whereas Mr. Mafuru Majura Mafuru, counsel for the Decree Holder was remotely present. 4 a.z.mgeyekwa JUDGE 28.10.2022 5

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