

TANZANIA / JUDGMENT

FOUR WAYS TRAVEL SERVICES MZA LTD

COURT
TANZLIIDECIDED
22 April 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA CIVIL EXECUTION NO. 07 OF 2023 (Originating from Civil Appeal No. 20
of 2022 of the High Court of Tanzania at Mwanza) FOUR WAYS TRAVEL SERVICES (MZA)
LTD.....D/HOLDER VERSUS MAGESA
MULONGO.....J/DEBTOR

RULING

3rd April & 22nd April 2024 ITEMBA, J. By this application, the Decree Holder is praying for execution of the decree of this court in Civil Appeal No. 20 of 2022 by arrest and detention of the Judgement Debtor as civil prisoner. Briefly counted from records, the Decree Holder sued the Judgement Debtor before the Resident Magistrate Court (Civil Case No. 37/2017) for payment of Tshs. 995,000/= and USD 13,000.000/= being debt of domestic and international Air Tickets issued to the Judgement Debtor and his family on divers dates. The matter before the trial court was heard ex parte and it was decided in favor of the Decree Holder. The Judgement Debtor unsuccessfully filed Misc. Civil Application No. 72 of 2021 to set aside the ex parte judgement and then Civil Appeal No. 20 of 2022 before this court. 1 When the matter was at appellate stage, parties redirected their minds and settled their dispute amicably on terms that the Judgement Debtor shall pay TZS 55,000,000/= by two equal instalments of TZS 27,500,000/= on 30/10/2022 and 15/11/2022 respectively. It was further agreed that, in event the Judgement Debtor defaulted to settle the decretal sum, commercial interest of 7% of the said sum shall be payable. Moreover, parties agreed that the arrest warrant dated 14/02/2019 which was issued by the trial court shall remain valid pending payment. Allegedly the judgement debtor has failed to honor the terms of the deed of settlement hence this application. When this matter was scheduled for hearing, Advocate Kabago Godwin appeared for the decree holder. The Judgement Debtor did not appear, I therefore ordered the matter to be heard ex parte. It was the submission of Mr. Kabago that, the application is made under Order XXI rule 28 of the Civil Procedure Code Cap 33 R.E 2019 (the CPC). That, the applicant is claiming Tshs. 58,850,000 being the principal amount and interest agreed in the deed of settlement. That, the parties agreed that, if the Judgment debtor fails to pay, the mode of execution should be arrest and detention of judgment debtor as a civil 2 prisoner. That, the last payment was supposed to be on 15/11/2024 but the Judgement Debtor has failed to pay. He added that, summons to show cause was issued and they served the Judgement Debtor through DHL. That, in 2023, this matter was already scheduled for about 5 different times before

the Deputy Registrar and Hon. Chuma J. but the Judgement Debtor never appeared despite being served with summons. He went on that, under Order XXI rule 35(2) of the CPC if the judgment debtor does not appear to show cause, the applicant or Decree Holder may apply to the court for an arrest warrant. He cited the case of Stanbic Bank Tanzania Limited v Mashaka Jonas Madale t/a Madale Trans & Supply of Agricultural Products, HC DSM, Misc. Civil Application No 302/2019 and prayed for the application to be allowed. I have considered the submissions for the decree holder, I have also careful read the records. There is no affidavit proving service of summons to show cause to the Judgement Debtor. However, the counsel for the Judgment debtor (RCO Advocates) on 19/06/2023 wrote a letter with Reference No. RCO/RQL/FTSL&MM/01/023 to the Deputy registrar requesting for an adjournment and account number of the Decree Holder 3 so as he can settle the decretal sum. The Deputy Registrar ordered the Decree Holder to avail the Judgement Debtor with the account number. Therefore, it is my considered view, that the Judgement Debtor knew the presence of this application since June 2023. It is the law under Order XXI Rule 35 (1) and (2) of CPC that when an application for arrest and detention as civil prisoner has been made, the court shall, when moved, issue an arrest warrant if the Judgement Debtor disobey the notice to show cause. It reads; 35.-(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention as a civil prisoner of a judgment debtor who is liable to be arrested in pursuance of the application, the court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the court on a day to be specified in the notice and show cause why he should not be committed to prison.

- (2) Where appearance is not made in obedience to the notice, the court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment debtor. (Bolding rendered for emphasis) 4 In this matter at hand, I am satisfied that the Judgement Debtor is determined not to appear before this court to show cause by ordinary means of service. Therefore, his arrest is paramount. In upshot, I hereby grant a prayer by the Decree Holder. Under order XXI Rule 35 (2) of CPC, the Judgement Debtor shall be arrested and brought before this court. Costs to be in the cause. It is so ordered. Right of Appeal fully explained to the parties. DATED at MWANZA this 22nd April, 2024 L. K. J. ITEMBA JUDGE Judgment delivered under my hand and seal this 22nd Day of April 2024, in the presence of Advocate Kabango Godwin and Fabian Kurwa for the decree holder and judgement debtor respectively and Ms. G. Mnjari, RMA. L. K. J. ITEMBA JUDGE 5

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