

TANZANIA / JUDGMENT

mrs zubeda ahmed lakha vs hajibhai kara ibrahim 2023 tzhc 22688 16 october 2023

COURT
TZHCDECIDED
16 October 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY OF TABORA AT TABORA EXECUTION CASE NO. 9 OF 2023 (Arising from Taxation Cause No. 4 of 2022 in the High Court of Tanzania at Tabora before N. W. Mwakatobe, Taxing Officer) MRS ZUBEDA AHMED LAKHA DECREE HOLDER VERSUS HAJIBHAI KARA IBRAHIM JUDGMENT DEBTOR

RULING

Date of Last Order: 10/10/2023 Date of Delivery: 16/11/2023 MATUMA, J. The Decree Holder filed this application praying for this court to call the Judgment Debtor to show cause as to why he should not be committed as a civil prisoner for deliberately refusing to pay Tshs. 8,020,000/= taxed vide the Taxation Cause No. 4 of 2022. The application has been brought under Order XXI Rule 35, 36 and 37 of the Civil Procedure Code Cap 33 R.E 2019. When the application came for hearing, the Decree Holder was represented by Mr M.K. Mtaki learned advocate while the Judgment Debtor defaulted appearance despite of having been served through his advocate one Victor Kikwasi. The learned advocate for the Judgment Debtor had appeared in court twice but he has as well disappeared without notice at the hearing of this matter. In that regard, I allowed the learned advocate for the Decree Holder to proceed ex-parte. In his submission, Mr Mtaki averred that this application intended for the Judgment Debtor to show cause why he should not be committed as a civil prisoner but he defaulted appearance. He therefore prayed for an order of arrest and detention as a civil prisoner because the Judgment Debtor is now hiding in Europe, he is on and off so as to avoid the execution of the decree. After having heard the submission of Mr Mtaki learned advocate, it is evident that the Judgment Debtor failed to execute the award of this court and according to the Decree Holder he has fled the country to Europe in order to avoid the said execution. He is now coming into Tanzania in a disguised manner and then go off. Since the Judgment Debtor is on and off the country as stated by the Decree Holder's advocate, the only remedy is to order his arrest and be detained as a civil prisoner once he is seen anywhere in this country until when he pays fully the decretal money. 2 It is clear under Order XXI Rule 35(2) of the Civil Procedure Code that 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. In the circumstance, under the above cited provision, I order that the Judgment Debtor be arrested

and be brought before this Court to show cause why should he not be detained as a civil prisoner. It is so ordered. Order; Ruling delivered in the presence of Mr. Akram Magoti, learned advocate for the Decree Holder and in absence of the Judgment Debtor. MA JUDGE 16/11/2023 3

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