

TANZANIA / JUDGMENT

twiga packers limited vs applied mechanical engineering co limited and another 2021 tzhccomd 3321 18 august 2021

COURT
TZHCCOMDDECIDED
18 August 2021

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA COMMERCIAL DIVISION AT DARES SALAAM
COMMERCIAL CASE NO. 13 OF 2014 TWIGA PACKER[^] LIMITED DECREE HOLDER VERSUS
APPLIED MECHANICAL ENGINEERING CO. LIMITED 1[@] JUDGMENT DEBTOR INSURANCE
GROUP OF TANZANIA LIMITED 2[°] JUDGMENT DEBTOR Date of Last Order: 16/08/2021 Date of
Ruling: 18/08/2021

RULING

MKEHA,J. On 12/08/2021 Mr. Julius Joseph Maiingumu who is the Managing Director of the 1^{^*} Judgment Debtor Company was brought before the court under arrest. Mr. Rwiza learned advocate for the decree holder informed the court that Mr. Maiingumu had been arrested following his faiiure to pay the decretal sum and that, he ought to be sent to prison as a civil prisoner for his failure to honour a promise to pay when he was arrested for the first time. Mr. Mwasanyamba iearned advocate for the Judgment Debtor asked for time to fie an affidavit in view of showing cause as to why Mr. Maiingumu should not be sent to prison. He was allowed to do so. In the affidavit of the said Mr. Julius Joseph Malingumu, he prayed not to be imprisoned since he is the only person responsible to make sure that the claimed sum is fully paid which can only be done if he is not a civil prisoner. When the parties appeared for hearing on 16/08/2021, Mr. Mwasanyamba learned advocate merely prayed that his client be released so that he can arrange paying the decretal sum. He undertook furnishing security by depositing in court some documents regarding ownership of immovable properties. Mr. Samwel Shedrack learned advocate who appeared for the Decree Holder submitted before the court that when Mr. Malingumu was arrested for the first time for failure to pay the debt, he committed himself before the court that he would satisfy the decree in installments. The learned advocate added that, the Judgment Debtor had asked for four months' time to pay. That is when the Judgment Debtor was discharged under Order XXI Rule 39 (1) of the Civil Procedure Code. The learned advocate insisted that, for failure to pay, the Judgment Debtor was supposed to be imprisoned as a civil prisoner. The learned advocate was however honest that, there was no court order which lifted veil of incorporation before seeking arrest and detention of a natural person who was not a party to the case which resulted into a decree now subject of execution proceedings. The only

issue for determination is whether execution proceedings can proceed against a stranger to a civil case. There is no denial that Mr. Malingumu was not in his personal capacity, a party to Commercial Case No. 13 of 2014. To proceed against him as the Director of the 1st Judgment Debtor Company, the Decree Holder was supposed to lift veil of incorporation which was not done as per the Decree Holder's advocate. That is a sufficient reason for not sending Mr. Malingumu to prison as a civil prisoner. For the foregoing reasons, the application for execution is not granted. The Decree Holder is advised to adhere to the procedure explained hereinabove or else seek for other mode of executing her decree. Mr. Julius Joseph Malingumu be discharged. It is so ordered. Dated at DAR ES SALAAM this 18th day of August, 2021 C. P. EHA JUDGE 18/08/2021. Court: Ruling is delivered in the presence of Mr. Julius Joseph Malingumu and the parties' advocates. cA Q C. P. MKEHA * Z o JUDGE * 18/08/2021. oivisv

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/182661/source_file/twiga-packers-limited-vs-applied-mechanical-engineering-co-limited-and-another-2021-tzhccomd-3321-18-august-2021.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/executionofdecree-tzhccomd-2021--6a3ea52b3b1caa9129823fbf>

Prepared on 23 October 2026 · Esheria