

TANZANIA / JUDGMENT

evans frank vs safi msafiri mtumbi mama simba 2022 tzhclandd 12465 24 october 2022

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24 October 2022

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM EXECUTION NO. 97 OF 2022 (Originating from Land Case No. 292 of 2015 of the High Court of Tanzania Land Division at Dar es Salaam) EVANS FRANK..... APPLICANT/DECREE HOLDER VERSUS SAFI MSAFIRI MTUMBI @ MAMA SIMBA..... RESPONDENT/JUDGMENT DEBTOR

RULING

Date of Last Order: 24.10.2022 Date of Ruling: 24.10.2022 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 11th October, 2022 against Safi Msafiri Mtumbi i @ Mama Simba. The applicant prays for this court to order the Judgment Debtor to pay the Decree Holder a sum of Tshs. 43,112,300/= costs of execution and in default thereof, the Judgment debtors Safi Msafiri Mtumbi @ Mama Simba be detained as a Civil Prisoner. Before hearing the matter I called the counsel for the Decree Holder to address the court whether the application is popper before this Court. The hearing was made through audio teleconference whereas Ms. Sitta Banzi was remotely present. 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, she submitted that the applicant has filed the instant application praying this Court to order the Judgment Debtor to pay Tshs. 43, 112,300/=. Ms. Sitta urged this Court to detain the Judgment Debtor as a civil prisoner because they have tried to execute the court decree without success. 2 I have heard Ms. Sitta's submission, and from the outset, I hold that the instant application is improper before this Court because the Decree Holder has not exhausted the first prayer, instead they want this Court to determine all modes of execution and apply the last resort ordering 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 means. 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 the 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 Abdalah 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. Having observed as hereinabove, I find that the application before this Court is prematurely filed. Therefore, I proceed to strike out the application. No order as to the costs. Order accordingly. Dated at Dar es Salaam this date 24th October, 2022. A.Z.MGEYEKWA JUDGE 24.10.2022 Ruling delive October, 2022 via audio teleconferencing whereas Ms. Sitta Banzi, counsel for the Decree Holder was remotely present. 4

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