

TANZANIA / JUDGMENT

juma lymo another vs sharif ally abdallah

2022 tzhclandd 12585 30 november 2022

COURT
TANZLIIDECIDED
30 November 2022

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM EXECUTION NO. 122
OF 2022 JUMA LYIMO..... DECREE HOLDER VERSUS SHARIF
ALLY ABDALLAH..... JUDGMENT DEBTOR

RULING

Date of Last Order: 29.11.2022 Date of Ruling: 30.11.2022 A.Z.MGEYEKWA, J This is an Application for Execution brought under Order XXI, Rule 35 (i) of the Civil Procedure Code, Cap.33 [R.E 2019], The applicant has applied for execution of the award against the Judgment Debtor. The applicant prays for this court to order the Judgment Debtor to pay the Decree Holder a sum of Tshs. 2,015,000/= costs of execution and in case of default thereof, the Judgment Debtors 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 The applicant's counsel was very brief, he submitted the Decree Holder urge this Court to call the Judgment Debtor to order him to comply with the decree of the Court, failure to that he should be detained as a civil prisoner. I have heard Mr. Masinde 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] which 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- by delivery of any property specifically decreed; 2

- a) by attachment and sale or by sale without attachment of any property. 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 30th November, 2022. GEYEKWA Ruling delivered on 3Q^hfo^ember, 2022 in the presence of Mr. Masinde Kisomo, learned counsel for the Decree Holder. YEKWA 3

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