

TANZANIA / JUDGMENT

BANK OF AFRICA T LTD VS IBRAHIM MAJEBELE MAYENGA APPL FOR EXCITION NO

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TANZLIIDECIDED
1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA COMMERCIAL DIVISION AT
PAR ES SALAAM APPLICATION FOR EXECUTION NO. 9317 OF 2024 (Originating from
Commercial Case No. 167 of 2017) BETWEEN BANK OF AFRICA (T)
LIMITED.....DECREE HOLDER AND IBRAHIM MAJEBELE MAYENGA.....
JUDGMENT DEBTOR

RULING

Date of Last Order: 18/07/2024 Date of Ruling: 07/08/2024 MKEHA, J: The decree holder in Commercial Case No. 167 of 2017 is moving the court for arrest and detention of the judgment debtor who failed to satisfy the decree since when it was issued against him on 15/08/2019, about five years ago. Upon being served with a summons for showing cause, why the sought execution orders ought not be issued, the judgment debtor filed an affidavit consisting of a number of reasons for his failure to satisfy the decree. In paragraphs 5 and 6 of the said affidavit, it is respectively stated as hereunder: 1 | Page ,z That, it is also common knowledge and not disputed by the decree holder that, upon utilization of the Loan Facility by the judgment debtor, the employer unreasonably during the month of December, 2016 unlawfully terminated the judgment debtor from his employment hence the judgment debtor was rendered jobless and thereby he could not even raise any(sic) money to eat and to meet other daily upkeeps for him and his family as has never secured any job based on such a bad termination record by the employer. That, it follows therefore, after unlawful termination of the employment of the judgment debtor, automatically the judgment debtor failed to remit the monthly instalments for the repayment of the loan as agreed, therefore there was no breach from the judgment debtor." From the two paragraphs, the judgment debtor attributes his failure to satisfy the decree with untimely termination of his employment which was the only source of monthly instalments to service his loan. According to the judgment debtor, unemployment has not only affected his ability to service the debt but also, his ability to meet basic family needs for subsistence. The decree holder's counter affidavit, sworn by Mr. Hance Stephen Mrindoko learned advocate, contains no single act of bad faith, alleged to 2 | Page have been committed by the judgment

debtor in obstructing execution of the decree. The decree holder appears to rely on mere indifference to pay on part of the judgment debtor, to press for arrest and detention of the latter. The only issue for determination is whether the decree holder has made a case for arrest and detention of the judgment debtor as a civil prisoner. The law requires that, there must be evidence of bad faith beyond mere indifference to pay. See: THE GRAND ALLIANCE LIMITED VS. MR. WILFRED LUCAS TARIMO AND FOUR (4) OTHERS, CIVIL APPLICATION NO. 187/16 OF 2019, CAT, AT DAR ES SALAAM. See also: Order XXI rule 39 (2) (a) to (e) of the Civil Procedure Code. In the present application, the decree holder has not adduced evidence on acts of bad faith committed by the judgment debtor with a view of obstructing execution of the decree. She merely relied on the judgment debtor's failure to satisfy the decree which is not a sufficient reason for ordering arrest and detention. It is for the foregoing reasons the application must fail. Consequently, the application is dismissed for being unmeritorious. DATED at DAR-ES-SALAAM this 07th day of AUGUST 2024. 3 | Page JUDGE 07/08/2024 COURT: Ruling is delivered in the presence of Mr. Hance Mrindoko learned advocate for the decree holder and in the absence of the learned advocate for the judgment debtor. / C. P. MKE JUDGE 07/08/2024 4 | Page

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Prepared on 13 October 2026 · Esheria