

TANZANIA / JUDGMENT

amana bank limited vs shabani athumani mshana aka shabani athumani mkwema and 2 others 2021 tzhccomd 3366 7 october 2021

COURT
TZHCCOMDDECIDED
7 October 2021

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IN THE HIGH COURT OF TANZANIA COMMERCIAL DIVISION AT DAR ES SALAAM
COMMERCIAL CASE NO. 124 OF 2014 AMANA BANK LIMITED..... DECREE
HOLDER VERSUS SHABANI ATHUMANI MSHANA Also known as SHABANI ATHUMAN
MKWEMA..... 1st! / DEBTOR ALAWI ATHUMANI MSHANA..... 2nd J/
DEBTOR HINGILILI COMMISSION AGENT (T) LTD..... 3rd J/ DEBTOR

RULING.

MKEHA, J. Through Ms. Geogina Basil learned advocate the decree holder is moving the court to have its assistance in executing its decree against the judgement debtors by way of arrest and detention as civil prisoners. Through Mr. Mshana learned advocate, the judgement debtors filed a joint affidavit to show cause as to why they should not be arrested and detained as civil prisoners. According to Mr. Mshana learned advocate and in terms of paragraph 9(i) to (xiv) of the judgement debtors joint affidavit, the decree holder has not exhausted other means of executing her decree as the collateral is still at the disposal of the decree holder. That, there is no proof that the collateral has depreciated in value. In view of the learned advocate for the judgement debtors, it would be unjust to ask for his clients' detention before exhausting other means of executing the decree. The learned advocate went on to submit that, there is no evidence that the judgement debtors had neglected paying while having such ability. Neither did the judgement debtors obstruct execution process leave alone hiding properties. The learned advocate renounced presence of acts of bad faith on part of his clients. He finally cited the decision in THE GRAND ALLIANCE LIMITED VERSUS MR. WILFRED LUCAS TARIMO AND 4 OTHERS, CIVIL APPLICATION NO. 187/16 OF 2019, CAT, AT DAR ES SALAAM in his bid to urge the court to hold in his clients favour. Ms. Georgina Basil submitted in reply that the judgement debtors attempted to obstruct sale by filing applications for injunctions. She further submitted that, efforts of the decree holder to dispose of the collateral proved futile. The learned advocate submitted further that, the judgement debtors are neither poor, nor bankrupt. She prayed that the application be granted. I have carefully gone through the decree holder's counter affidavit as deposed by Mr. Fahd Ahmed Afif. Neither of the paragraphs contained therein explains the actual act of bad faith

done by the judgement debtors to obstruct execution of the decree holder's decree. The decree holder pointed to no specific act of negligence on part of the judgment debtors for not paying the decretal sum. The cases referred to in paragraph 5 of the counter affidavit were filed at the Resident Magistrate's Court of Dar es salaam and at the High Court Dar es salaam District Registry in 2013 and 2014 at the time when the decree sought to be 2 executed was yet to be passed. It cannot therefore be successfully argued that the two cases were designed to obstruct execution. There is no denial that the judgement debtors' property (the collateral) is still withheld by the decree holder. Yet to be disposed. In the absence of proof of acts of bad faith committed by the judgement debtors, with view of obstructing or delaying the decree holder in the execution of the decree and on strength of the decision in THE GRAND ALLIANCE CASE (supra), the application for arrest and detention cannot succeed. The application is thus refused. The decree holder is advised to proceed against the judgement debtors' property at her disposal before attempting to arrest and detain the judgement debtors as civil prisoners. Dated at DAR ES SALAAM this 7th day of October, 2021. JUDGE 7/10/2021 Court: Ruling is delivered in the presence of Ms. Georgina Basil for the decree holder Mr. Mshana for the Judgement debtors this 7th day of C. P. MKEHA JUDGE 7/10/2021 3

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CASE PAGE <https://chat.esheria.ai/case-law/tanzania/executionofdecrees-tzhccomd-2021--6a3ea52b3b1caa9129823f9d>

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