

TANZANIA / JUDGMENT

education books publisher ltd vs hasham kassam sons ltd 3 others 2023 tzhccomd 18 10 february 2023

COURT
TZHCCOMDDECIDED
10 February 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT DAR ES SALAAM (ARISING FROM EXECUTION PROCEEDINGS IN RESPECT OF COMMERCIAL CASE NO 5 OF 2011) BETWEEN EDUCATION BOOK PUBLISHER LTD..... DECREE HOLDER I VERSUS HASHAM KASSAM & SONS LIMITED..... 1st JUDGEMENT DEBTOR I ISA LIMITED..... 2nd JUDGEMENT DEBTOR UNIONARE LIMITED..... 3rd JUDGEMENT DEBTOR I BANK M (TANZANIA) LIMITED..... 4th JUDGEMENT DEBTOR Date of last order: 8th February 2023 Date of Ruling: 10th February 2023

RULING

MKEHA, J When the judgement debtors were invited to show cause why execution orders should not be granted, the following reasons were offered: Ms. Upendo Mmbaga learned advocate for the 4th judgement debtor submitted that, her client had appealed to the Court of Appeal of Tanzania and that/ there was a pending application for stay of execution before the Court of Appeal. On the other hand, Mr Shaban Atpdallah learned Advocate submitted on behalf of the 1st and 2nd judgement debtors that his clients had an intention of filing an application for stay of execution. The two advocates urged the court to halt execution proceedings which in effect would be similar to issuing an order of stay of execution in respect of a decree issued more than five years ago, by the trial court. Mr. Ogunde learned advocate submitted in reply that, the 1st and 2nd judgement debtors had no valid notice of appeal hence they could not properly ask for an order of stay of execution. As for the 4th judgement debtor, the learned advocate submitted that, there was no order for stay of execution from the Court of Appeal. When Ms. Mmbaga learned advocate for the 4th judgement debtor rose to rejoin, she told the court that the application for stay of execution was yet to be admitted at the Court of Appeal. She nevertheless asked this court to halt execution proceedings. 2 In terms of the submissions by the learned counsel for the parties the 1st and 2nd judgement debtors have no valid notice of appeal. The 4th judgement debtor has a valid notice of appeal though she has no actual pending application for stay of execution. The issue is whether the judgement debtors have succeeded showing cause for not issuing execution orders. It is not disputed that there is no order of stay of execution from the

Court of Appeal. Halting execution proceedings as per submission of Ms. Mmbaga learned advocate equals to staying execution. The position is well settled that once notice of appeal is filed in terms of the Rules the High Court ceases to have jurisdiction of granting an order having effect of staying execution. I therefore hold that the judgement debtors have not succeeded showing cause why execution orders should not be granted. It is so held. Dated at Dar es salaam this 10th day of February! 2023. C. P. MKEHA JUDGE 10/02/2023 3 Court: Ruling is delivered in the presence of the parties' advocates. C. P. MKEHA JUDGE 10/02/2023 4

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