

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

COMMERCIAL CASE NO. 124 OF 2020

STANBIC BANK TANZANIA LIMITED..... DECREE HOLDER

VERSUS

CHANG QING INTERNATIONAL

INVESTMENT COMPANY LIMITED.....1ST JUDGMENT DEBTOR

LI HONG.....2ND JUDGMENT DEBTOR

LEI CHANG QING.....3RD JUDGMENT DEBTOR

RULING

Date of Last Order: 21/03/2024

Date of Ruling: 18/04/2024

MKEHA, J.

In this matter the Decree Holder has preferred an application for execution of decree against the 2nd and 3rd Judgment Debtors. The mode of execution sought against the said Judgment Debtors is by this court ordering them to pay the decretal amount of USD 6,357,432.22, and in case they fail then an order be issued to detain them as civil prisoners.

Hearing of this application was conducted orally. Whereas the Decree Holder was represented by Mr. Augustino Ndomba learned advocate, the Judgment Debtors were under representation of Mr. Deogratias Kirita, learned advocate.

Submitting for the Judgment Debtors Mr. Kirita argued that, he had no objection for the application to proceed against the 1st Judgment Debtor. However, he objected this matter to proceed against the 2nd and 3rd Judgment Debtors as the same would amount to going against the deed of settlement which resulted into the decree sought to be executed. According to the learned counsel, paragraph 7 of the deed states that the decree would be executed by disposing of all the assets of the 1st Judgment Debtor.

In response, Mr. Ndomba was brief that, paragraph 7 of the deed of settlement did not imply what had been submitted by Mr. Kirita learned advocate. The learned advocate submitted that, paragraph 1 of the deed indicates that the defendants would be jointly and severally liable.

In rejoinder Mr. Kirita stated that, the issue was what ought to be sold and not who ought to be arrested. According to the learned advocate, by disposing of the assets in terms of the deed, the decree stood satisfied.

Having carefully considered the present application and submissions of the parties' advocates, the issue for determination is whether the 2nd and 3rd Judgment Debtors are liable to be arrested and detained as civil prisoners.

The main contention as per the submissions of counsel for both parties is based on the implication of the deed of settlement duly executed by the parties regarding the liability of the 2nd and 3rd Judgment Debtors. While the counsel for the Judgment Debtors has maintained that the 2nd and 3rd Judgment Debtors are no longer liable to satisfy the decree in line with the said deed of settlement particularly under paragraph 7, the counsel for the Decree Holder on the other hand, has insisted that all Judgment Debtors are jointly and severally liable by virtue of paragraph 1 of that deed of settlement.

I have gone through the deed of settlement in question. The same was filed in this court on 17th June, 2021 and is the basis of the decree sought to be executed in the application at hand. What is observable in paragraph

1 of the deed of settlement relied upon by the counsel for the Decree Holder is to the extent that, the same was a mere quotation of the prayers contained in the plaint.

On the other hand, paragraph 7 relied upon by the counsel for the judgment debtors indicates that, the subject decree should be executed against all the Judgment Debtors by way of disposition of all assets listed in the facility letters executed between the Plaintiff and the 1st Defendant (1st Judgment Debtor).

Therefore, I concur with the learned counsel for the Judgment Debtors that, by virtue of the said deed of settlement the decree should be executed by disposing of all the assets of the 1st Judgment Debtor because this is what the parties agreed upon.

All in all, the Decree Holder has not stated why this court should proceed to execute the said decree under this mode of arresting and detaining the 2nd and 3rd Judgment Debtors in defiance of the deed of settlement that was voluntarily concluded between herself and the Judgment Debtors.

Moreover, even in absence of the said deed of settlement still this mode of execution would not be maintainable for obvious reasons. That is, the

Decree Holder has not met the conditions stipulated under Order XXI rule 39(2) of the Civil Procedure Code [Cap. 33 R.E. 2019]. The decree holder has not indicated how the judgment debtors have concealed the attachable properties or that they have in one way or the other obstructed the execution process or that they neglected paying while having means of doing so. This is because; mere failure to pay is not a justification for detaining the judgment debtor as a civil prisoner. See: THE GRAND ALLIANCE LTD V. MR. WILFRED LUCAS TARIMO AND 4 OTHERS, CIVIL APPLICATION NO. 187/16 OF 2019, COURT OF APPEAL OF TANZANIA, AT DAR ES SALAAM (UNREPORTED).

Therefore, for the foregoing reasons the issue raised is answered in the negative and as such, the application is dismissed with no order as to costs.

DATED at DAR ES SALAAM this 18th day of APRIL 2024.




C.P.MKEHA

JUDGE

18/04/2024

Court: Ruling is delivered in the presence of Mr. Augustino Ndomba learned advocate for the decree holder, Mr. Deogratias Lymo and Alfred Lymo, learned advocates for the judgment debtors.




C.P. MKEHA

JUDGE

18/04/2024