



**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY OF TANZANIA**

A large, faint background image of a scale of justice, rendered in a reddish hue, positioned behind the central circular graphic.

# EXECUTION GUIDELINES

**SEPTEMBER, 2020**





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**JUDICIARY OF TANZANIA**



**EXECUTION**  
**GUIDELINES**





## TABLE OF CONTENTS

PREFACE .....	ii
STATUTES .....	iii
SUBSIDIARY LEGISLATION.....	iv
TABLE OF CASES .....	v
ABBREVIATIONS .....	vi
DEFINITION OF TERMS .....	vii
<b>CHAPTER ONE.....</b>	<b>1</b>
1. INTRODUCTION.....	1
1.1. Background and Rationale for Developing the Execution Guidelines..	1
1.2. Objectives .....	2
<b>CHAPTER TWO .....</b>	<b>3</b>
2. EXECUTION PROCESS IN CIVIL CASES .....	3
2.1. Introduction .....	3
2.2. Courts which may Execute Decrees.....	3
2.3. Application for Execution .....	4
2.4. Modes of Execution: .....	4
2.4.1. Modes of executing decree under the CPC: .....	4
2.4.2. Other Modes of Execution .....	4
2.5. Restrictions and Limitations on Execution Process .....	5
2.5.1. Property Attachable Subject to Restrictions.....	5
2.5.2. Non-attachable Properties .....	5
2.5.3. Demolition and Eviction at Night or Weekends .....	7
2.6. Execution of a Decree Against the Government .....	7
2.7. Objection Proceedings .....	7
2.8. Execution of Foreign Judgment .....	7
2.9. Stay of Execution .....	7
2.10. The Matrices.....	8
2.10.1. Execution in the High Court, the Court of Resident Magistrate and District Court.....	8
2.10.2. Execution of Award in the Labour Division of the High Court.....	12
2.10.3. Execution of Decrees of Primary Courts.....	13
<b>CHAPTER THREE.....</b>	<b>16</b>
EXECUTION OF ORDERS IN CRIMINAL CASES BEFORE THE HIGH COURT, THE COURT OF RESIDENT MAGISTRATE, THE DISTRICT COURT AND PRIMARY COURT...	16

## PREFACE

The vision of the Judiciary of Tanzania as stated in its Five-Year Strategic Plan 2015/16 -2019/20 (JSP) is to ensure timely and accessible justice for all. One of the pillars of the JSP is access to justice and expeditiousness, which targets at creating systems and processes that accelerate disposal of cases and enhance access to justice. Corollary to that, effective case management becomes central to the administration of justice.

Execution of court decrees and orders is an integral component of administration of justice. Efficiency, transparency and high degree of discipline are of the essence not only in trial and determination of suits, but also in the process of executing court orders and decrees.

This booklet contains Execution Guidelines developed from statutes, case law and practice. The Guidelines are issued with the hope that, their use will increase efficiency, effectiveness, transparency and uniformity in the execution of court orders and decrees. With time, the Guidelines may be improved to cope with developments in the law and practice. All courts are expected to comply with the Guidelines.

I would be happy to receive any suggestions and lessons learnt in the process of applying the Guidelines.

I also wish to express my gratitude to the Judiciary Rules Committee, the Directorate of Case Management, Stakeholders and everyone who was involved in the process of development and finalization of these Guidelines, for dedicating their time and commitment to the whole process.



Dar es Salaam  
10<sup>th</sup> September, 2020

.....  
Prof. Ibrahim Hamis Juma  
*Chief Justice*

## STATUTES

1. The Civil Procedure Code [Cap. 33 R.E. 2019].
2. The Criminal Procedure Act [Cap. 20 R.E. 2019].
3. The Drugs Control and Enforcement Act [Cap. 95 R.E. 2019].-
4. The Economic and Organized Crimes Control Act [Cap. 200 R.E. 2019].
5. The Employment and Labour Relations Act [Cap. 366 R.E. 2019].
6. The Government Proceedings Act [Cap. 5 R.E. 2019]
7. The Judicature and Application of Laws Act [Cap. 358 R.E. 2019].
8. The Labour Institutions Act [Cap. 300 R.E. 2019].
9. The Law of the Child Act [Cap. 13 R.E. 2019].
10. The Local Government (District Authorities) Act [Cap. 287 R.E. 2002].
11. The Local Government (Urban Authorities) Act [Cap. 288 R.E. 2002].
12. The Magistrates' Courts Act [Cap. 11 R.E. 2019].
13. The Proceeds of Crime Act [Cap. 256 R.E. 2019].
14. The Reciprocal Enforcement of Foreign Judgments Act [Cap. 8 R.E. 2019].
15. The Wildlife Conservation Act [Cap. 283 R.E. 2010].

## SUBSIDIARY LEGISLATION

1. The Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) Rules, 2017, GN. No. 363 of 2017.
2. The Labour Court Rules, 2007, (GN. No. 106/2007)
3. The Law of the Child (Juvenile Court) (Procedure) Rules, 2016 GN. No. 182 of 2016.
4. The Magistrates' Courts (Civil Procedure in Primary Courts) Rules GNs. Nos. 310 of 1964 and 119 of 1983 (CPPCR).



## TABLE OF CASES

1. B.O.T v. Valambhia, Civil Reference No. 4 of 2013, CAT (unreported).
2. Balozi A. Ibrahim and Another v. Ms. Benandy's Ltd and Others, Revision No. 6 of 2015, CAT (unreported).
3. Dilip Kumar Singh @ Dilip Kr. Sinha v. Mostt. Sakuntala Devi, 2003 (51) (2) BLJR 978.
4. Shakila Malick v. Said Almasi, Civil Appeal No. 3 of 1999, CAT (unreported).

# ABBREVIATIONS

CMA	Commission for Mediation and Arbitration.
CPA	Criminal Procedure Act.
CPC	Civil Procedure Code.
D/H	Decree Holder.
DPP	Director of Public Prosecutions.
ELRA	Employment and Labour Relations Act.
GN	Government Notice.
J/D	Judgment Debtor.
JALA	Judicature and Application of Laws Act.
JSP	Judicial Strategic Plan.
LC	Labour Commissioner.
LIA	Labour Institutions Act.
MCA	Magistrates’ Courts Act.
MHA	Mental Health Act.
PCCPC	Primary Court Criminal Procedure Code.
PSSSF	Public Service Social Security Fund.
TRC	Tanzania Railways Corporation.

# DEFINITION OF TERMS

<b>Application</b>	Means any application made in the process of execution and includes an oral application.
<b>Court</b>	Means the High Court and courts subordinate there to.
<b>Executing officer</b>	Means a court broker, a process server or any other person engaged by the Registrar or by the magistrate in-charge to execute a warrant of attachment or court order for sale, or to serve or to effect a court process.
<b>Execution</b>	Means the process for enforcing or giving effect to the decree, order or award of the court, as the case may be.
<b>Registrar</b>	Means the Chief Registrar, the Registrar of the Court of Appeal, the Registrar of the High Court and the Deputy Registrar or Acting Registrar.
<b>Specified Offences</b>	Has the meaning ascribed to it under section 3 of the Proceeds of Crime Act.



## 1. INTRODUCTION

These Guidelines aim at facilitating smooth execution of decrees and orders of the court with a view to ensuring efficient and effective realization of successful civil and criminal litigations. The Guidelines shall be read subject to the relevant laws and circulars pertaining to the administration of justice in Tanzania. They merely give directions on the manner in which executions should be carried out.

### 1.1. Background and Rationale for Developing the Execution Guidelines

The Judiciary of Tanzania is implementing a Five-Year Strategic Plan (JSP 2015/16-2019/20) with three pillars which aim at improving delivery of services. The pillars are: First, Governance, Accountability and Management of Resources; second, Access to Justice and Expeditionousness; and third, Public Trust and Stakeholders' Engagement. These Guidelines falls under the second pillar, which aims at developing systems and processes that accelerate disposal of cases.

Execution of court orders and decrees is an inherent component of the administration of justice and a vital stage in the judicial process. However, the execution process is currently beset by problems and there is dissatisfaction from stakeholders. The shortcomings in the process include but not limited to:-

- (a) knowledge gap in execution processes among judicial officers and executing officers (court brokers);
- (b) execution processes taking long time;
- (c) lack of proper and effective monitoring of execution process;
- (d) malpractice by executing officers; and
- (e) costly executions.

## 1.2. Objectives

The main objective of these Guidelines is to provide a quick reference in plain language. In particular, they aim at:

Providing an overview of important aspects of execution process;

- (a) Offering concise, transparent and easy to follow principles;
- (b) Combining different processes and principles necessary in execution process to maintain easy monitoring; and
- (c) Promoting uniformity and common understanding amongst judicial officers on procedural steps taken by the courts or parties or their representatives.

## 2. EXECUTION PROCESS IN CIVIL CASES

### 2.1. Introduction

Execution in common parlance is the process of enforcing or giving effect to court orders and decrees. In the context of these Guidelines it is used to include enforcement of decrees and orders from courts. Execution enables the decree holder to realize the fruits of the decree. The process of execution is the last stage in litigation. The two preceding stages are one, the pre-trial, which involves the institution of the case and resolution of preliminary issues and two, the trial and decision making.

### 2.2. Courts which may Execute Decrees

In terms of section 33 of the CPC, a decree may be executed either by the court which passed it or the court to which it is sent for execution. The Court which passed the decree may upon application by the decree holder transfer it to another court for execution, i. e section 34(1) of the Civil Procedure Code, [Cap. 33 R. E. 2019] (the CPC) or the court on its own motion may send it for execution to any subordinate court, i. e. section 34(2) of the CPC.

Primarily, the court which passed the decree or order, or to which a decree or order is brought under any other law (e.g. CMA decree under section 89(2) of the ELRA, and section 47(8) of the LIA), is the executing court.

If an order or decree is appealed against and the appellate court passes a decree or order, even then the original court which passed the decree or order continues to be treated as court which passed decree.

### **2.3. Application for Execution**

All proceedings for execution commence with the filing of an application for execution by any of the following persons:

- (a) Decree-holder;
- (b) Legal representative of the decree-holder;
- (c) Representative of a person claiming under the decree-holder;
- (d) Transferee of the decree-holder, in some cases; and
- (e) Any other person as the law may provide (e.g. LC under section 48(8) of the LIA).

### **2.4. Modes of Execution:**

#### **2.4.1. Modes of executing decree under the CPC:**

The following modes of execution are provided for under section 42 of the CPC:

- (a) By delivery of any property specifically decreed;
- (b) By attachment and sale of the property or by sale without attachment of the property;
- (c) By arrest and detention;
- (d) By appointing a receiver; and
- (e) Such other manner as the nature of the relief granted may require.

#### **2.4.2. Other Modes of Execution**

By applying for a garnishee order under common law.



## **2.5. Restrictions and Limitations on Execution Process**

In the course of execution there are some restrictions and limitations to be taken into account:

### **2.5.1. Property Attachable Subject to Restrictions**

- (a) Agricultural produce can be attached and sold pursuant to O. XXI rr. 42-44 and 72-73 of the CPC;

Attachment shall be made by affixing a copy of the warrant of attachment in case of:

- i.) growing crop, on the land on which the crop is grown; or
- ii.) produce which has been cut or gathered, on the place on which it is deposited.

Provided that where the produce to be attached has been gathered, the court shall make arrangement for custody.

- (b) Livestock can be attached and sold subject to the limitations provided under rule 29 of the Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) Rules, 2017, GN. No. 363 of 2017.

### **2.5.2. Non-attachable Properties**

Most properties are liable for attachment except those specified under section 48 of the CPC and paragraph 3(3) of the Provisions Relating to the Civil Jurisdiction of Primary Courts; Fourth Schedule to the Magistrates' Courts Act [Cap. 11, R. E. 2019] (the MCA), which include the following:

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;
- (b) tools of artisans, and, where the judgment debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the court, be necessary to enable him to earn his livelihood as such;

- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;
- (d) any land used for agricultural purposes by a village, an Ujamaa Village, a co-operative society, or an individual whose livelihood is wholly dependent upon the use of such land;
- (e) any residential house or building, or part of a house or building occupied by the judgment debtor, his wife and dependant children for residential purposes;
- (f) books of account;
- (g) a mere right to sue for damages;
- (h) the salary of an employee to the extent of-
  - i.) The whole of the salary where it does not exceed one hundred and fifty shillings monthly;
  - ii.) one hundred and fifty shillings monthly where the salary exceeds one hundred and fifty shillings and does not exceed two hundred and fifty shillings and does not exceed two hundred and twenty-five shillings monthly;
  - iii.) two-thirds of the salary in any other case; or
  - iv.) the expense allowances of any employees;
- (i) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (j) a right to future maintenance; or
- (k) any other property declared by any written law not to be liable to attachment.

### **2.5.3. Demolition and Eviction at Night or Weekends**

No court decree or order of demolition or eviction from a landed property shall be executed at night or on a day other than a working day unless leave has been sought and granted by the executing court.

## **2.6. Execution of a Decree Against the Government**

When the judgment debtor is a Government ministry, local government authority, independent department, executive agency, public corporation, parastatal organization or a public company established under any written law to which the Government is a majority shareholder, the procedure for execution shall be as provided for under section 16 of the Government Proceedings Act [Cap.5 R.E. 2019] (the Government Proceedings Act) as amended by the Written Laws (Miscellaneous Amendments) Act, 2020.

## **2.7. Objection Proceedings**

All objections to attachment, including questions of right, title and interest in the property attached, have to be decided by the court which passed the decree upon an institution of objection proceedings in the same record and not by a separate suit. However, a party against whom an order is made may institute a suit to establish his right over the property in dispute (O. XXI rr. 57-62 of the CPC).<sup>1</sup>

## **2.8. Execution of Foreign Judgment**

Generally, foreign judgments are enforceable in Tanzania in accordance with the Reciprocal Enforcement of Foreign Judgments Act [Cap. 8 R.E. 2019].

## **2.9. Stay of Execution**

Execution of decree can be stayed either by the court to which the decree has been sent for execution in accordance with O. XXI r. 24 of the CPC or by the court itself or an appellate court under O.XXXIX r. 5 of the CPC.

<sup>1</sup> Shakila Malick v. Said Almasi, Civil Appeal No. 3 of 1999, CAT (unreported) and B.O.T v. Valambhia, Civil Reference No. 4 of 2013, CAT-(unreported).

## 2.10. The Matrices

The matrices appearing below contain summary of procedures and the relevant provisions of the law pertaining to execution in:

- (a) Execution in the High Court, the Court of Resident Magistrate and the District Court.
- (b) Execution of Awards in the Labour Division of the High Court.
- (c) Execution of Primary Court Decrees.

### 2.10.1. Execution in the High Court, the Court of Resident Magistrate and District Court

1.	<p>Application for execution shall be presented by way of Form 5 set out in the Civil Procedure (Approved Forms) Notice, 2017.</p> <p>The Court, after an application is filed, shall do the following:</p> <ol style="list-style-type: none"> <li>(a) Scrutinize the application with a view to ascertaining that the application correctly reflects the decree or order.</li> <li>(b) If it does not reject the application, open an execution case file, which should be attached to the main file.</li> <li>(c) Issue a formal order and specify the day on or before which it shall be executed; or</li> <li>(d) If an application is made after one year, order a notice to show cause to issue.</li> <li>(e) Issue a warrant of attachment or a notice to show cause, as the case may be, signed by the judge or magistrate or distinct officer.</li> </ol>	<p>O. XXI r. 9 &amp; 10 and Part II esp. S. 31 of the CPC and GN. No. 388 of 2017.</p> <p>O. XXI r. 15 of the CPC.</p> <p>O. XXI r.22 (2) and (3) of the CPC.</p> <p>O. XXI r.20 of the CPC.</p>
2.	Order of execution and assignment of an executing officer (Court Broker).	O. XXI r. 15 & 22 of the CPC and the Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) Rules, 2017(GN. No. 363/2017).
3.	Issuance and service of 14 days' notice to the judgment debtor to settle the claim or comply with the order of the court.	r. 21 of GN. No. 363/2017.
4.	<p>Attachment of movable and immovable property:</p> <ol style="list-style-type: none"> <li>(a) Movable property: <ul style="list-style-type: none"> <li>• Movable property attached by seizure and kept for 15 days.</li> </ul> </li> <li>(b) Immovable: <ul style="list-style-type: none"> <li>• Immovable property attached by an order prohibiting the judgment debtor from transferring or charging the property in any way for 30 days.</li> <li>• Such order has to be affixed on a conspicuous part of the property and at the court house.</li> </ul> </li> </ol>	<p>O. XXI rr. 42 &amp; 67 of the CPC.</p> <p>O. XXI rr. 66 &amp; 67 of the CPC. (Prohibition Order is Form No. F/14 GN. No. 388/2017).</p>

5.	<p>Executing officer's report: The executing officer has a duty to execute the warrant, endorse it the way he/she has executed or reasons for failure to execute and return it to the court within the time specified.</p> <ul style="list-style-type: none"> <li>Unless ordered by the court, the executing officer shall not attach property with a market value which exceeds the value of the decree plus the execution expenses permitted under the Rules by more than 5%.</li> <li>Where the executing officer fails to execute an order of execution, he shall notify the court on his failure to execute it after which the court shall, upon application by the decree holder, vacate the order and issue a fresh one in respect of the same or another property to be pointed out by the decree holder.</li> </ul>	<p>O. XXI r. 23 of the CPC.</p> <p>O. XXI r. 15 of the CPC.</p>
6.	<p>Submission of inventories The executing officer has to submit an inventory showing the items attached and their values.</p>	<p>r. 24 of the Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) GN. No. 363/2017</p>
7.	<p>Decree holder has to apply for proclamation of sale just before the expiry of the period of attachment (movable property 15 days and immovable property 30 days).</p>	<p>O. XXI r. 65 (3) of the CPC.</p>
8.	<p>Issuance by the executing court of a formal order for sale of the attached property by public auction.</p>	<p>O. XXI r. 65(3) of the CPC.</p>
9.	<p>Notifying the decree-holder and judgment debtor the time and place of sale.</p> <ul style="list-style-type: none"> <li>The court has to issue a proclamation of sale notifying the decree-holder and judgment debtor the time and place of sale.</li> <li>The proclamation of sale has to be published by affixation on the court's notice board and on the conspicuous part of the property.</li> <li>If the court orders it to be published in the local newspapers, in case of immovable assets it must be so published.</li> </ul>	<p>O. XXI r. 65(2) and 66 of the CPC.</p>
10.	<p>Sale of attached property (in case of sale of movable property 15 days from the date of the proclamation of sale and 30 days in case of sale of immovable property).</p>	<p>O. XXI r. 67 of the CPC.</p>
11.	<p>Deposit of moneys paid in execution. The executing officer has to deposit moneys paid in execution to the clients' account or transferred to the court's account on the date of its payment or if the date of payment is not a working day or payments were made after working hours, the amount so deposited or paid, shall be transferred to the court's account on the next working day.</p>	<p>r. 25 of the Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) GN. No. 363/2017.</p>
12.	<p>Filing of the Bill of costs of the taxing officer.</p>	<p>r. 27 (4) of the Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) GN. No. 363/2017.</p>
13.	<p>Taxing the Bill of costs of the executing officer.</p>	<p>As above.</p>
14.	<p>Distribution of proceeds of sale:</p> <ul style="list-style-type: none"> <li>Pay the court's commission</li> <li>Pay the executing officer</li> <li>Pay the decree holder</li> <li>If there is a balance, pay it to the judgment debtor.</li> </ul>	

15.	<p>Confirmation of sale</p> <ul style="list-style-type: none"> <li>If it is a sale of an immovable property, the executing court has to make an order confirming the sale.</li> </ul>	O. XXI r. 90 (1) of the CPC.
16.	<p>Attachment of the bank account (money in the bank) (Garnishee proceedings)</p> <p>The garnishee proceedings are applicable in Tanzania based on common law procedure in terms of section 2 of Judicature and Application of Laws Act Cap. 358 R.E. 2019. The procedure is as follows-</p> <ul style="list-style-type: none"> <li>A decree holder files an application seeking the assistance of the court to attach the judgment debtor's debt or movable property in the possession of another person (garnishee).</li> <li>Upon receipt of the application, the court has to issue a notice (garnishee order nisi) to the judgment debtor's creditor (the garnishee) calling upon him/her within the period specified in the notice either to pay into Court the said amount or to appear before the Court in Chambers and show cause why he should not be ordered to do so.</li> <li>The Court may order the judgment debtor to be served with a copy of notice (garnishee order).</li> <li>Non-appearance of a Garnishee or failure to pay the amount as per the notice: Where the garnishee fails to appear or pay to court the amount ordered in the notice or garnishee order nisi, the Court may order that garnishee to comply with the terms of such notice or pass such other order as it may deem it fit. Thus, the court will issue a garnishee order absolute.</li> <li>Garnishee disputes liability: Where the garnishee disputes liability, the court may order that any issue or question necessary for determining garnishee's liability be tried as though it were an issue in a suit; and upon the determination of such issue, it shall pass such order upon notice as it may think fit.</li> </ul>	
17.	<p>Attachment and sale of agricultural produce.</p> <ul style="list-style-type: none"> <li>Attachment - <ul style="list-style-type: none"> <li>1. Affix a copy of the warrant in case of: <ul style="list-style-type: none"> <li>(a) growing crop, on the land on which the crop is grown; or</li> <li>(b) produce which has been cut or gathered, on the place on which it is deposited.</li> </ul> </li> <li>2. Affix a copy of the warrant on the outer door of the house in which the judgment debtor ordinarily resides or with leave of the court on the outer door of the house which he carries on business.</li> <li>3. Where the produce to be attached has been gathered, the court shall make arrangement for custody; or</li> <li>4. Where the order is for the attachment of growing crop, it shall specify the time at which it is likely to be harvested.</li> </ul> </li> <li>Sale: <ul style="list-style-type: none"> <li>(a) If it is a growing crop the sale shall be made near the land where it is grown;</li> <li>(b) If produce is cut or gathered sale shall be made at the place where it is deposited or as the court may order).</li> </ul> </li> <li>Where no fair price is offered, or judgment debtor requests that it be adjourned to the next day or next market, sale shall be postponed and shall be completed whatever price will be offered.</li> </ul>	<p>(O.XXI rr. 43 &amp; 44) of the CPC.</p> <p>O.XXI r. 72(1) (b) of the CPC.</p> <p>O.XXI r.72 (2) of the CPC.</p>

18.	Attachment of movable property not in the hand of the judgment debtor shall be by written order prohibiting, in case of: <ul style="list-style-type: none"> <li>• a debt, the debtor from making payment thereof and the creditor from recovering the debt.</li> <li>• a share, the shareholder from transferring the same or receiving dividends.</li> <li>• any other property, the person in possession thereof from giving it to the judgment debtor.</li> </ul>	O.XXI, r. 45(1) (c) (iii) of the CPC.
19.	Attachment of negotiable instrument neither deposited in a court or in the custody of a public officer: <ul style="list-style-type: none"> <li>• By actual seizure; and</li> <li>• Bringing it in to court.</li> </ul>	O.XXI, r.50 of the CPC
20.	Attachment of debt not secured by a negotiable instrument: <ul style="list-style-type: none"> <li>• By an order prohibiting; and</li> <li>• The creditor from receiving the debt and the debtor from paying the debt.</li> </ul>	O.XXI, r. 45 (1) (a) (i) of the CPC.
21.	Attachment of share in the capital of a corporate entity: <ul style="list-style-type: none"> <li>• By an order prohibiting the person in whose name the share stands from transferring it or receiving dividends thereon.</li> </ul>	O.XXI, r. 45 (1) (b) (ii) of the CPC.
22.	Attachment of share or interest in movable property belonging to the judgment debtor and another as co-owners: <ul style="list-style-type: none"> <li>• By a notice to the judgment-debtor prohibiting him from transferring or charging it.</li> </ul>	O.XXI, r.46 of the CPC.
23.	Attachment of salary or allowance of a public servant or a private employee by an order that: <ul style="list-style-type: none"> <li>• The amount shall be withheld from such salary not exceeding one third or allowances either in one payment or by monthly instalments.</li> </ul>	Section 48 and O.XXI, r.47 (1) of the CPC.
24.	Partnership property. By making an order: <ul style="list-style-type: none"> <li>• charging the interest of the partner in the partnership property;</li> <li>• appointing a receiver of the share of the partner in profits;</li> <li>• directing inquiries on the accounts of the partnership to determine the judgment debtor's interest; and</li> <li>• ordering sale of such interest.</li> </ul> Notice of the application by the decree holder must be served on the judgment debtor and the partner(s).	O.XXI, r. 48(1) (2) of the CPC.
25.	Attachment of property in custody of court or public officer: <ul style="list-style-type: none"> <li>• By notice to such court or officer, requesting that such property and any interest or dividend thereon, may be held subject to the order of the court.</li> </ul>	O.XXI, r.51 of the CPC.
26.	Attachment of decree for payment of money or sale in enforcement of a mortgage or charge- passed by the court executing the decree passed by another court decree other than that mentioned above; By issuing a notice to: <ul style="list-style-type: none"> <li>• the decree-holder prohibiting him from transferring or charging it in any way.</li> <li>• the executing court prohibiting it from executing the decree until such notice is cancelled.</li> </ul>	O.XXI, r.52 of the CPC.

27.	Attachment of livestock: (a) Appoint an executing officer; and (b) Call parties to arrange for the safe custody, feeding and transport of the livestock and for the fixing and payment of costs to be incurred. The Court may withdraw the warrant of attachment if no proper arrangements are made.	R. 29 of GN. No. 363/2017.
28.	<ul style="list-style-type: none"> <li>• When there is default in payment; <ul style="list-style-type: none"> <li>o the deposited money may be forfeited to the Government, after defraying the expenses of the sale, and the property shall be re-sold.</li> <li>o the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.</li> </ul> </li> <li>• Setting aside sale in execution. <ul style="list-style-type: none"> <li>o Where there is fraud or irregularity in publishing or conducting the sale. See also <b>Balozi A. Ibrahim and Another v. Ms. Benandy's Ltd and Others</b>, Revision No. 6 of 2015 (Unreported), <b>Dilip Kumar Singh @ Dilip Kr. Sinha v. Mostt. Sakuntala Devi</b>, 2003 (51) (2) BLJR 978.</li> </ul> </li> </ul>	O. XXI rr. 84-88 of the CPC.
29.	<p>Distribution of proceeds of sale.</p> <p>The executing court shall apply the proceeds of execution deposited into the court's account for:</p> <ul style="list-style-type: none"> <li>• paying the executing officer's costs and expenses which have been taxed;</li> <li>• paying the decree holder as per the decree;</li> <li>• paying the court's commission, if any;</li> <li>• remitting the balance, if any, to the judgment debtor;</li> <li>or</li> <li>• doing anything incidental as the court may direct:</li> </ul> <p>Provided that, money realized by the sale of property shall not be paid out until after the expiry of thirty days from the date of the auction.</p>	R. 28A the Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) Rules, 2017 GN. No. 363 of 2017.

## 2.10.2. Execution of Award in the Labour Division of the High Court

S/N.	Step in Execution	Relevant Provision(s) of the Law
1.	Filing of application in Labour Court Form No. 10 (CC. 10).	Rule 48(3) of the Labour Court Rules, 2007, (GN. No. 106/2007) & Order XXI r. 9 and 10 (2) of the CPC.
2.	Deputy Registrar to accept or reject application.	Rule 7 (4) and (5) of GN. No. 106/2007.
3.	Issuance of notice to the parties.	By practice of the court.
4.	Stay of execution.	Section 91(3) of the Employment and Labour Relations Act, 2004.
5.	Execution of award.	Follow steps from stage one of Part I of the matrix above.



### 2.10.3. Execution of Decrees of Primary Courts

S/N.	Step in Execution	Relevant Provision(s) of the Law
1.	Attachment of wages or salary of a judgment debtor.	Rule 68 CPPCR & paragraph 3(3)(c) of the Fourth Schedule, Cap. 11.
2.	Attachment and sale of property. · Inquiry as to the means of satisfying the award.	Rule 54 (1) of the Magistrates' Courts (Civil Procedure in Primary Courts) Rules GNs. Nos. 310 of 1964 and 119 of 1983 (CPPCR).
3.	Fix a day(s) on/before which the money/ compensation is to be paid and inform the judgment debtor on the consequences of default.	Rule 54 (3) of the CPPCR.
4.	If the money under Item 2 above is not paid, the decree holder shall apply <i>ex-parte</i> for attachment of property of the judgment debtor.	Rule 62 of the CPPCR.
5.	The court shall verify on non-satisfaction of the award and issue warrant of attachment: Provided that the following properties are not attachable: o Family residential house. o Land used for agricultural purposes by cooperative society, village and individual wholly dependent entirely on that land.	Rule 63 of the CPPCR.
6.	The magistrate in-charge shall appoint the executing officer who shall be either a court broker or any officer of the government or local government authority.	Rules 60 & 61 of the CPPCR.
7.	Service of warrant. · Where property attached is a building attachment warrant to be posted on the main door. · Court broker/Local government/ any other person as court may deem appropriate.	Rule 64 of the CPPCR.
8.	Seizure of property. · For growing crops seizure be done when they are ready to be cut or gathered.	Rule 65 of the CPPCR.
9.	Storage of property to be seized. · If it is perishable, immediately sold. · For cattle, decree holder to provide care and sustenance while in custody of the court.	Rule 66 of the CPPCR.
10.	The decree holder shall, within 15 days from the date of attachment or seizure, make an ex-parte application for an order for sale.	Rule 72 of the CPPCR.
11.	The court to issue an order of sale.	Rule 72 and 73 of the CPPCR-Fomu ya Madai Na. 17.
12.	Posting of the order for sale. · The court shall cause copies of the order for sale to be posted on notice board; and · Where the property to be sold is a building, on the main door; and · On such other public place as the court may direct.	Rule 74 of the CPPCR.

13.	<p>Advertisement of date and time of sale by public.</p> <ul style="list-style-type: none"> <li>• A person appointed to conduct the sale, shall advertise the date and time of sale by public pronouncement or publication in a newspaper having substantial local circulation.</li> <li>• An immovable property shall not be sold before expiry of 30 days from the day of issue of order for sale.</li> <li>• The court may in its discretion adjourn the sale.</li> <li>• Where the appointed person considers it necessary such person may adjourn the sale and shall give reasons for adjournment to the court.</li> <li>• Where the sale is adjourned, the court shall appoint a fresh day and time.</li> <li>• Where the adjournment is for more than 30 days the sale shall be re-advertised.</li> </ul>	Rules 74, 75 and 76(1) & (2) of the CPPCR.
14.	Sale of property.	Rules 77, 78 and 79 of the CPPCR.
15.	<p>Payment by purchasers.</p> <ul style="list-style-type: none"> <li>• Movable property to be paid in cash at the time of sale or soon thereafter.</li> <li>• 25% shall be deposited in the district court account on the date of auction or if the auction was conducted after working hours or on a non-working day, the amount due shall be deposited in the district court account on the next working day.</li> <li>• 75% shall be deposited in the district court account within 15 days from the date of auction.</li> <li>• Proof of deposit shall be submitted to the executing court without delay.</li> <li>• Where the decree holder is granted leave to purchase, the amount to be realized and the purchase money will be set off one against the other and the balance, if any, shall be deposited to the district court account.</li> </ul>	Rules 79 & 80(1) & (2) of the CPPCR.
16.	<p>Application of proceeds of sale.</p> <p>All proceeds of sale shall first be paid into the district court account and shall be distributed as follows:</p> <ul style="list-style-type: none"> <li>• Pay expenses of the sale first.</li> <li>• Payment to the decree holder as per the award.</li> <li>• Payment of the balance, if any, to the judgment debtor.</li> </ul> <p>Where the sold property is subject to attachment in other court proceedings, the proceeds of sale shall be divided pro rata between the decree holders.</p> <p>Proceeds realized from the sale of immovable property shall not be paid until after 30 days.</p>	Rule 81(1) of the CPPCR.

17.	<p>Cancellation of sale due to purchaser's default.</p> <ul style="list-style-type: none"> <li>On the purchaser's failing to pay the balance, the sale shall be cancelled and: <ul style="list-style-type: none"> <li>(a) Deposit money shall be forfeited.</li> <li>(b) Property shall be re-offered for sale.</li> <li>(c) Forfeited deposit shall be applied to pay the expenses of the cancelled sale.</li> <li>(d) Balance of the forfeited deposit, if any, shall be paid into general revenue unless defaulting bidder has reasonable excuse for default.</li> </ul> </li> <li>Expenses of an unsuccessful auction shall be borne by the decree holder.</li> </ul>	Rules 82 & 83 of the CPPCR.
18.	<p>Delivery of property sold in execution.</p> <ul style="list-style-type: none"> <li>Movable property is delivered to the purchaser immediately after payment in full.</li> <li>For immovable property certificate of sale shall be issued to the purchaser after expiry of 30 days subject to approval or consent where necessary.</li> </ul>	<p>Rule 84 of the CPPCR.</p> <p>Fomu Madai Na. 18.</p>
19.	<p>Taking possession.</p> <ul style="list-style-type: none"> <li>The existing rights and obligations of bona fide tenants shall continue to apply.</li> </ul>	Rule 84 (3) of the CPPCR.
20.	<p>Setting aside of sale of immovable property in execution.</p> <ul style="list-style-type: none"> <li>The sale may be set aside within 30 days. Grounds to be considered in setting aside sale:</li> <li>Fraud or material irregularity in the proceedings leading up to, or in the conduct of, the sale.</li> <li>Judgment debtor has no saleable interest. Sale may be set aside only after all affected parties have been heard.</li> <li>Where sale has been set aside the purchaser shall be entitled to get his money back.</li> </ul>	Rule 85(1) & (3) of the CPPCR.

## CHAPTER THREE

### EXECUTION OF ORDERS IN CRIMINAL CASES BEFORE THE HIGH COURT, THE COURT OF RESIDENT MAGISTRATE, THE DISTRICT COURT AND PRIMARY COURT

Unlike in civil cases, final orders in criminal cases are executed by different institutions. This Chapter is confined to orders which are executed by the courts, namely; fines, penalty, compensation, costs and expenses.

Procedure for enforcement of court orders is provided in the matrix below:

S/N.	Steps in Execution	Relevant Provision(s) of the Law
1.	<p>The court shall, where the accused person or prosecutor or complainant fails to pay money ordered in the form of fine, penalty, compensation, costs or expenses,</p> <ul style="list-style-type: none"> <li>• Issue warrant of distress on movable or immovable property.</li> <li>• Appoint executing officer and serve him with the distress warrant.</li> <li>• Upon receipt of the distress warrant, the executing officer shall issue 14 days' notice to whom the warrant has been issued against requiring him to pay.</li> <li>• Attachment-</li> <li>• If there is: <ul style="list-style-type: none"> <li>(a) no objection, proceed to attach as provided in the civil matrices above.</li> <li>(b) an objection to attachment, inquire and make the requisite order.</li> </ul> </li> <li>• Sale; <ul style="list-style-type: none"> <li>(a) Executing officer shall sell the distrained property by auction and cause the proceeds deposited in the distinct account.</li> <li>(b) Distribution of proceeds of sale. <ul style="list-style-type: none"> <li>The executing court shall apply the proceeds of execution deposited into the court's account for: <ul style="list-style-type: none"> <li>(a) paying the executing officer's costs and expenses which have been taxed;</li> <li>(b) pay, in case of; <ul style="list-style-type: none"> <li>i. fine, penalty or cost, into the general revenues of the Republic and obtain exchequer receipt;</li> <li>ii. compensation, the victim or complainant;</li> </ul> </li> <li>(c) pay the balance, if any, to the person against whom the warrant of distress was issued.</li> </ul> </li> </ul> </li> </ul> </li> <li>(d) Release the convict.</li> </ul>	<p>Section 328 of the Criminal Procedure Act [Cap 20 R. E. 2019] (the CPA), section 118 of the Law of the Child Cap. 13 and r. 51 of the Law of the Child (Juvenile Court) (Procedure) Rules, 2016 GN. No. 182 of 2016.</p> <p>Sections 329 of the CPA.</p>

2.	<p>Forfeiture and or confiscation.</p> <p>Where the court forfeits or confiscates any property, it may order the property to be:</p> <ul style="list-style-type: none"> <li>(a) destroyed; or</li> <li>(b) delivered to the person entitled to it; and</li> <li>(c) kept or sold, and if sold, order that the proceeds thereof be held pending any persons claiming title to it establishes such right, but if no such right established within six months (6), the property or the proceeds thereof, shall form part of or be paid into the Consolidated Fund.</li> </ul> <p>If the court orders disposition of property by sale, the procedures provided under item one (1) above shall apply. Provided that, the order for destruction, delivery, or sale shall not be carried out until the period for appeal has elapsed, or where there is an appeal lodged, until it is disposed of, except where the property is livestock or is subject to speedy and natural decay.</p>	<p>Section 351 of the CPA, Section 111 of the Wildlife Conservation Act 2007, Section 49A of the Drug Control and Enforcement Act No. 5 of 2015 and section 60(3) of the Economic and Organized Crime Control Act [Cap. 200 R.E.2019].</p>
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Dar es Salaam  
10<sup>th</sup> September, 2020

  
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 Prof. Ibrahim Hamis Juma  
*Chief Justice*







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