

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 98 OF 2016**

**MBEGA FARM COMPANY LIMITED ..... PLAINTIFF**

**VERSUS**

**CRDB BANK PLC ..... DEFENDANT**

**RULING:**

**MRUMA, J:**

This is an application for execution of a decree by way of arrest and detention of the Judgment debtor's directors Malik Salmin Nahdi and Khalid Salmin Nahdi following failure by the company Mbega Farm Company Ltd to settle the decretal sum of Tshs 750,000,000.00 agreed in the deed of settlement.

Counsel for the Judgment debtors has submitted that the Judgment debtors are intending to settle the decretal amount through Amana Bank but Amana Bank has given some conditions which included surrendering of the title deed of a property which is in possession of the Decree Holder who has refused to hand it over to the bank.

Secondly, it is the submission of the learned counsel that another reason as to why the Judgment debtor has failed to settle the decretal sum is the fact that one of the directors of the Judgment debtors company has passed away and the company is awaiting for the appointment of the administrator of his estate before it can be able to settle the decree.

I find these reasons not sufficient to constitute good cause as to why the Judgment debtor's directors should not be committed to prison as prayed.

Firstly, as correctly pointed out by Mr. Lyimo Counsel for the Decree Holder, there is nothing from Amana Bank to suggest that the bank is prepared to settle the decree against the Judgment debtors upon complying with certain conditions. In law the burden of proof is on he who alleges existence of any fact (see Section 110 (1) & (2) of the Evidence Act Cap 6 RE 2002). The Judgment debtors did not attempt to discharge that burden.

On the appointment of an administrator of the estate of one of the directors of the Judgment debtors company, throughout his submissions counsel for the Judgment debtors did not show how the demise of one of the directors of the Judgment debtor's company hampered execution of a decree against it. To the contrary and as submitted by the counsel for the Decree holder, the company is transacting its business as usual and it defended the suit in absence of the demised director.

For those reasons I find that no cause, let alone sufficient cause has been shown as to why the two directors should not be committed to

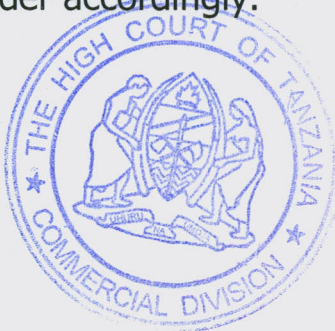
prison as civil prisoner. However, as this mode of execution of a decree entails curtailing of personal freedom of the person cited, instead of committing them to prison as prayed I would order that they be arrested and brought before this court so that they can be heard personally before the order is made.

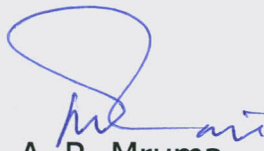
Accordingly I order:-

**Order:**

1. In terms of Rule 35 (2) of Order XXI of the Civil Procedure Code (Cap 33 RE 2002) arrest warrant shall be issued against Malik Salmin Nahdi and Khalid Salmin Nahdi so that the two can be brought before this court and personally be heard as to why they should not be committed to prison as prayed.
2. In terms of Rule 38(1) of the same Order, the Decree Holder is ordered to pay into court Tshs 50,000/= in respect of each cited person being their subsistence allowance from the time of their arrest until they are brought in court.

Order accordingly.



  
A. R. Mruma,

Judge

07<sup>th</sup> February, 2018