

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

COMMERCIAL CASE NO. 132 OF 2015

TATA AFRICA HOLDING TANZANIA LIMITEDPLAINTIFF

VERSUS

BARRETTO HAULIERS TANZANIA LIMITED DEFENDANT

RULING

MRUMA, J:

On 15th November 2017, this court made an order requiring the Judgment debtors to make sufficient disclosure and submit to the Deputy Registrar a list and proper description of the properties they own which would be sufficient to satisfy the decree passed against them. On 21st November 2017 they filed in this court a list of properties the value of which is indicated to be USD 150,000.00.

According to the application filed by the Decree holder, the amount due (i.e principal plus interests) as at the date of filing of the application i.e 15/6/2016 was USD 494,022.54. The Judgment debtors have not disputed this figure (i.e amount) as being the amount payable under the decree.

Thus, the value of the properties listed which is USD 150,000.00 is far less the amount claimed in the decree.

In the circumstances therefore I find and hold that the Judgment debtors have failed to disclose and submit a list of property the value of which are sufficient to satisfy the decree passed against them.

It has been submitted that this proceedings should be adjourned to pave way for the hearing of two pending applications which touch the execution process. I find this prayer as misconceived. In the first place as correctly observed by Mr. Lusiu Peter for the Decree Holders, execution order had already been issued and the court is now in the process of implementing it.

Secondly, in terms of Rule 5 (1) of Order XXXIX of the Civil Procedure Code (Cap 33 RE 2002) an appeal or any other process cannot operate as a stay of proceedings under a decree or order appealed from except so far as the court may order.

A quest to adjourn these proceedings to pave way for hearing of pending application will amount to a stay of proceedings which is prohibited by Rule 5 (1) of order XXXIX as stated above.

For the above reasons, the prayer by Mr. Carlos J. Cuthbert for adjournment of the matter is refused and I order as follow:

Order:

1. As the Judgment debtors Directors are not in court today, I order for issuance of arrest warrant in terms of sub rule (2) of Rule 35 of Order XXI of the Civil Procedure Code.
2. In terms of Rule 38 (1) of Order XXI of the same code, the Decree Holder is ordered to pay into court Tshs 50,000/= in respect of each director being their subsistence allowance from the time of their arrest until they are brought before the court .




A. R. Mruma

Judge

7/2/2018