

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR-ES-SALAAM.

COMMERCIAL CASE NO. 55 OF 2005

USANGU GENERAL TRADERSPLAINTIFF/APPLICANT

VERSUS

KAGERA TEA COMPANY.....DEFENDANT/RESPONDENT

RULING

MRUMA, J:

It is said that the travails of Decree holder commence after he has obtained a decree in his favour. This case is no different. The case spans a period of over twelve years after the passing of the decree in favour of the Decree holder.

In order to appreciate the contentions following brief facts are required to be noticed.

Usangu General Traders Limited a limited liability Private Company instituted a suit against the present Judgment Debtor Kagera Tea Company, another private Company claiming for payment of Tshs 427,375,753.49 being the outstanding balance on the account for loan agreement which Usangu had granted to Kagera. After full trial, this court

(Kimaro J as she then was) passed a decree in favour of the Decree holder for Tshs 119,824,263.00. The decree was passed on 27/4/2006.

On 28/9/2006, the Decree holder filed an application for execution of that decree and that is when the Decree holder's travails were commenced. It appears that the decree was satisfied. Thereafter the Decree Holder obtained an order for payment of Tshs 30,428,297.00 being her bill of costs as taxed by the Taxing Officer on 3/7/2014. These proceedings are related to the decree arising from the said bill of costs.

Counsel for the Judgment debtor claimed that the Judgment debtor paid Tshs 31,000,000/= to the Decree Holder's former Advocate one Mr. Masaka (now deceased) and that the balance of Tshs 5,798,297.00 could not be paid following Mr. Masaka's demise.

At first counsel for the Decree Holder Claimed that the entire Decree had not been satisfied therefore the proceedings for execution should continue as prayed. While the matter was still pending, the learned counsel for the Decree Holder (probably after being served with some documents exhibiting payments to his client) took a stand that out of Tshs 36,798,297.00 due, Tshs 5,799,300.00 had been paid direct to his client. He disputed payments allegedly made to former Advocate Masaka.

At the hearing Counsel Tito Lwira, who represents the Judgment debtor produced in evidence copies of Petty Cash Voucher, exhibiting payments to the late Masaka.

I have carefully looked at these Photostat copies of Petty Cash Vouchers which shows that Tshs 31,000,000.00 were paid to Advocate Masaka Mr. Thomas as being payments of bill of costs for Usangu General Traders.

While I do agree that payment to a party's Advocate could constitute payment to the party herself under the Principle of Principal/Agent relationship but payments which are claimed to have been made to Advocate Masaka M. Thomas had not been proved. Copies of the Petty Cash Voucher produced as exhibit do not bear the official stamp of Advocate Masaka and they are not accompanied by any receipt to prove that they were actually received by Masaka. Although they are signed but this court does not know the signature of Advocate Masaka.

In the circumstance, I allow the execution to proceed and as the outstanding balance is not big, I order that only a house on Plot No. 334 and 335, Kilima Bugabo be attached and sold in execution of the decree unless sooner the decretal sum of Tshs 31,000,000/= is paid.




A. R. Mruma

Judge

16th July, 2018