

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**CIVIL REVISION NO. 01 OF 2021**

*(Arising from the Ruling and Order of the Resident Magistrates' Court of Mwanza at Mwanza in Execution No. 113 of 2020)*

**ACCESS BANK TANZANIA LTD ..... APPLICANT**

**VERSUS**

**SHARJAH GENERAL TRADING (T) LTD ..... RESPONDENT**

**RULING**

*06/04/2021 & 26/05/2021*

**W. R. MASHAURI, J;**

This application is made under section 79 (1) (c) of the CPC Cap. 33 R.E. 2019 together with other provisions of the law.

The orders sought by the applicant are: -

- (a) This court be pleased to exercise its revisional and supervisory power to call for and examine on the propriety, legality and correctness of the ruling and order issued by Hon. M. Ndyekobora, SRM in execution No. 113 of 2020 delivered on 16<sup>th</sup> day of December 2020.

- (b) Costs of this application.
- (c) Any other orders this court may deem fit and just to grant. The applicant is represented by Miss Happiness Mangowi learned counsel while the respondent is represented by Mr. Steven Makwega learned counsel.

When the matter appeared in court for hearing on 06/4/2021, Miss Happiness Mangowi learned counsel for the applicant contended as well as is done by Mr. Patrick Suluba Kanyerero the Principal Officer and legal officer of the applicant that, this application is filed in this court under section 79(I)(c), section 95 of the CPC Cap. 33 R.E. 2019 together with other enabling provisions of the law and the applicant is praying the court to exercise its revisionary power to call and satisfy itself on the correctness of the ruling and order issued by Hon. M. O. Ndyekobora SRM in execution No. 113 of 2020 delivered on 16/12/2020.

That the applicant was dissatisfied with the decision of the trial court on reasons to wit: -

1. The learned trial magistrate erred in law and facts to release the motor vehicle with Reg. No. T. 314 BFQ which was pledged to the applicant.

That the said order was wrongly made as it denies the applicant to use the said motor vehicle which was mortgaged by respondent as security for the loan of which the respondent has failed to pay. The applicant has there right to impound the motor vehicle and sold it so as to realize the loan tendered to the respondent.

That, sometimes in 2019, the respondent instituted a Civil Case No. 17 of 2019 praying the court to give an order directing the applicant to release the impounded motor vehicle with Reg. No. T. 314 DFQ Scania and hand it back to the respondent.

That, in the course of proceeding with Civil Case No. 47 of 2019, the applicant and respondent continuously in a dialogue aiming to resolve the matter amicably their understanding of which was reduced in writing in a deed of settlement of which was reduced into a consented judgment and/or order as shown in annexure marked ABT – I.

That, following the respondent's failure to honour the terms and conditions stipulated in the deed of settlement and consented judgment, and or the attested order the applicant filed an application for execution No. 113 of 2020 of which its ruling was delivered on 16/12/2020 ordered the



applicant to release the motor vehicle with Registration No. T. 314 DFQ Scania within 14 days from the date of ruling and the respondent was ordered to pay the balance of Tshs. 23,171,058 within 6 months from the date of handing over the said motor vehicle to the respondent as per ruling marked annexure marked ABT – 3.

That, the respondent is still indebted to the applicant the loan balance in the tune of Tshs. 23,171,058 payable within six months from the date when the confiscated motor vehicle will be handed over to the respondent.

Furtherstill, the applicant is demanding the respondent a total sum of Shs. 35,128,771.79 including the principal amount, interest and overdue payment which is yet paid by the respondent.

The issue is whether the order of the trial court to return the morged motor vehicle with Reg. No. T. 314 DFQ make Scania which was mortgaged by the respondent to the applicant Access Bank Tanzania Ltd as security for loan obtained by respondent from the applicant pending realization of the full loan to the applicant is justifiable.

In the trial court record, there is a consent settlement order in Civil Case No. 47 of 2019 which was filed in court by Sharjar General Trading (T)

Ltd against Access Bank Tanzania Ltd 1<sup>st</sup> Defendant and Josina Company Ltd  
2<sup>nd</sup> Defendant.

It appears, upon reached a mediation stage, the parties agreed that: - The defendant shall pay for the plaintiff outstanding loan due total Tshs. 22,369,199.42 being principal amount unpaid plus Tshs. 901,859.69 being interest which all make a total sum of Tshs. 23,171.058.91. The schedule of payment was at as follows: -

- (a) That, the plaintiff shall pay the 1<sup>st</sup> defendant a total sum of Tshs. 20,000,000/= prior to this deed of settlement and payment was successfully done on 30/11/2019.
- (b) That, the plaintiff shall pay a monthly in the tune of Tshs. 3,000,000/= starting from 15/01/2020 until the outstanding loan is fully paid.
- (c) That, the respondent shall release the impounded motor vehicle T. 314 DGQ SCANIA and hand it over the same to the plaintiff.
- (d) That the plaintiff shall pay all costs incurred by the 2<sup>nd</sup> defendant during the impounding process in the total sum of Tshs. 1,500,000/= and costs of the suit. The agreement was recorded a consented settlement order.



It appears the respondent did not honour the terms and conditions contained in the deed of settlement the act of which prompted the plaintiff Access Bank Tanzania to file an application in the Resident Magistrates' court for Mwanza for execution No. 133 of 2019 in which the Decree Holder prayed to attach and sell the judgment debtors Plot No. 679, Block "B" Uhuru street located at Nyegezi area in Mwanza Municipality. Plot No. 314 Block "R" Uhuru Street area in Mwanza Municipality.

Following the default of the judgment debtor to honour the deed of settlement terms and conditions, made on 30/11/2019 the Decree Holder filed an application for execution of the decree No. 113 of 2020. In which and in the course of executing the consented agreement settlement order, the respondent's motor vehicle with Registration No. T. 314 DPQ make SCANIA Truck was impounded.

Following the attachment and impounding of the respondent's motor vehicle (supra) the respondent file Civil Case No. 47 of 2019 requesting the court to direct the applicant to release the impounded motor vehicle with Reg. No. T. 314 DFQ make SCANIA Truck and hand it back to the respondent. Hence this application for revision of the ruling of the Resident Magistrates' court in execution No. 113 of 2020.

In this matter, by didn't of the applicants sworn affidavit supported by the consent settlement order, it is not disputed that the respondent ever secured a loan from the applicant in the principal sum of Tshs. 22,369,199.42 plus an interest of Shs. 901,859.69 which make a total outstanding loan of Shs. 23,171.058.91 and it is not disputed that upon secured the loan, the respondent did not honour the loan agreement the respondent became fugitive of law when the case was disposed of by way of mediation of which was tamed a consented settlement order, yet, the respondent has deliberately declined to honour the consented judgment.

At law, one cannot live on a sweat of others by invoking methodologies of coxing and cajoling others and obtaining money from them simply just like that, he must work so as to get money for him and his family's survival. The application is granted with costs. The order given by the District court of releasing the applicant's motor vehicle with Reg. No. T. 314 make Scania truck and other orders pertaining thereof are hereby quashed and set aside. Pending payment of the applicant's money Shs. 23,171.058.91.



  
**W. R. MASHAURI**

**JUDGE**

**26/05/2021**

Date: 26/05/2021

Coram: Hon. W. R. Mashauri, J

Applicant:

Respondent:

B/c: Elizabeth Kayamba

**Mr. Makwega, Advocate:** I appear for the respondent and I also hold brief of Mr. Amos Godno, Advocate for the applicant. The matter comes for judgment and we are ready.

**Court:** Ruling delivered in court this 26/05/2021 in presence of Mr. Amos Gondo, Advocate for the applicant and Mr. Magwega, Advocate.

Right of appeal explained.



  
**W. R. MASHAURI**

**JUDGE**

**26/05/2021**