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EXAMINATION OF PRACTICAL CHALLENGES AND PROCEDURAL IMPLICATIONS BY DECREE-HOLDERS IN THE EXECUTING OF COURT DECREE AGAINST DISTRICT COUNCILS IN TANZANIA.

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Abstract

This study examines the practical challenges and procedural implications faced by decree-holders in the execution of court decrees against District Councils in Tanzania. Although a court decree conclusively determines the rights and obligations of the parties, its enforcement against District Councils presents distinctive legal and practical difficulties arising from the statutory protection afforded to public funds and property. The execution under the Civil Procedure Code and the special procedures applicable to public authorities under the Government Proceedings Act and the Local Government (District Authorities) Act. In particular, the study examines the requirement for obtaining and serving a Certificate of Order. The findings indicate that decree-holders face significant obstacles, including the statutory prohibition against direct execution and attachment of Council property, the absence of a clear statutory deadline for satisfying a Certificate of Order, delays arising from administrative and budgetary procedures, financial constraints, and appeals or applications for stay of execution.

The study recommends, among other measures, the introduction of a clear statutory time limit for payment after issuance of a Certificate of Order, dedicated budgetary provisions for judgment debts, maintenance of registers of outstanding decrees, strengthened accountability of responsible local government officials, expedited procedures for decree-holders, improved judicial supervision, and mechanisms for negotiated payment arrangements.

Introduction

Court Decree According to section 3 of the civil procedure Code,ⁱ constitutes the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit.ⁱⁱ In the municipal civil law system of Tanzania, a decree is the crucial link between a judicial decision and a binding obligation. Order xx rule 6 and 7 of civil procedure code,ⁱⁱⁱ and Peter, C. M.^{iv} Under the common rules of civil procedure, the successful litigant will have an immediate status as a judgment creditor by the entry of a decree, which is the final product of adversarial litigation, and which transforms abstract rights into specific duties.

Execution of court decree the last step in civil litigation, the decree holder is required to file an application to the court to enforce the award when the losing party (judgment debtor) fails to comply voluntarily and the decree holder has a specific timeframe to file an application to the court to enforce the award.^v The court will enforce the judgment in the following primary ways: Attachment and Sale of Property: The court's bailiff can seize and publicly auction the judgment debtor's movable or immovable assets to satisfy the judgment; Garnishment of Funds: In some cases, the court's bailiff can attach a bank account or a portion of the judgment debtor's salary to recover the money owed; Delivery of Property.

Decree-holder is any person or entity in whose favor a court decree or an order capable of execution has been passed, the decree-holder has the legal right to start enforcement or execution proceedings if



the opposing party (the judgment debtor) fails to comply voluntarily.^{vi}

District councils According to the Local Government (District Authorities) Act,^{vii} each local Government in Tanzania is a body corporate having perpetual succession and a common seal as per section 5. The local government has the legal powers of a corporation and can enter into contracts, purchase and own property, and file civil lawsuits in its own name. In private law, a corporate designation means that the corporation is fully and independently liable for its obligations, rather than the people who manage it or the higher state authorities that established it. This independence is the legal basis of commercial and civil relations with local government.

Legal framework governing of execution of court Decrees against district councils Tanzania

The Constitution of the United Republic of Tanzania, 1977 [Cap. 2]

The Constitution of the United Republic of Tanzania,^{viii} as the supreme law of the nation, laying down the basic constitutional principles governing the subsidiary laws in the land. With respect to the enforcement of law post judgment, Article 13(1) of the Constitution of the United Republic of Tanzania,^{ix} ensures that all citizens are treated equally under the law and are entitled, without any discrimination, to the equal protection of law and benefit from the same. Also, under Article 26(1) of the Constitution of the United Republic of Tanzania,^x imposes an absolute obligation on all individuals to align their actions with the Constitution and laws of the nation. This obligation is emphasized by Article 107A (1) of the Constitution of the United Republic of Tanzania,^{xi} which confers ultimate judicial authority on the judiciary alone, suggesting that the ultimate outputs of judicial authority, that is, judgments and decrees, ought to be respected and effectively enforced.

The Local Government (District Authorities) Act, [Cap. 287 R.E. 2023]

The Local Government (District Authorities) Act is the key piece of legislation that creates the structure and framework of District Councils within Municipal Tanzania. According to Section 5 of the Local Government (District Authorities) Act,^{xii} the said Act clearly specifies that all District Councils formed under it shall be treated as bodies corporate having perpetual succession and a common seal, with the power to sue and be sued in its name. However, the contradiction arises when one looks at the corporate nature of the body through the light of According to section 199 of the Local Government (District Authorities) Act,^{xiii} same Act. The said section grants immunity to the local government from any action brought directly against the funds or properties of the councils. This provision is characterized as setting up a double standard situation whereby a District Council can participate in business activities, employ individuals, and be responsible for large liabilities as an independent business entity; however, it strips off the power of enforcing such liabilities from the civil court once they are proved in court. In this case, all the risks are left to be

borne by the judgment creditors since the corporation nature of the District Council becomes invisible through the wall of public law immunities in the execution process. From the legal perspective, it sets up a situation of irony where a statutory body is empowered with the powers of a private individual under the law of contract but retreats into the sovereignty of public law once it fails to honor its liabilities.^{xiv}

The Civil Procedure Code, [Cap. 33 R.E. 2023]

According to section 2 and 3A of the Civil Procedure Code,^{xv} gives general principles of civil process and enforcement in all primary courts, district courts, and the High Court of Tanzania and Order XXI Rule 1 of the Civil Procedure Code,^{xvi} describes the general methods of Execution, comprising of attachment of movable property.

Sale of landed estates and garnishing of debts, whereas Section 48 of the Civil Procedure Code,^{xvii} defines the specific properties which are liable to be attached and sold in execution of the decree.

The Public Finance Act, [Cap. 348 R.E. 2023]

The Public Finance Act creates the legal basis for the management and control of public money in Tanzania, according to section 13(1) of the Public Finance Act,^{xviii} the Paymaster General and the Treasury are vested with strict control over the disbursement and spending of all public money, with the stipulation that each transaction is associated with a pre-approved budgetary vote,^{xix} when a judgment creditor seeks to execute a financial order against a District Council, such an enactment creates a major administrative obstacle.

The Local Government Finances Act, [Cap. 290 R.E. 2023]

Under the Local Government Finances Act,^{xx} the particular sources of income, budgeting process, and finance management regulations of the local government bodies of Tanzania are covered. According to section 5 of the Local Government Finances Act,^{xxi} highlights the legitimate sources of income for the district councils of Tanzania which include the local taxes, service charges, and subventions from the central government. Analyzed, critically section 9 of the Local Government Finances Act,^{xxii} prescribes that the income collected by the Local Government should only be deposited in designated bank accounts and spent on lawful expenditure of the local governments.

This provision, therefore, comes into conflict with the interests of the judgment creditor. As the Act protects revenues belonging to the locality for purposes of community projects, using such revenues to settle a civil judgment goes against the financial planning rules,^{xxiii} of local governments.

The Budget Act, [Cap. 439 R.E. 2023]

The Budget Act,^{xxiv} regulates the process of the national budget by setting out clear time frames, transparency issues, for all expenditures, including expenditures from the local government authorities. As per section 22 of the Budget Act,^{xxv} any public expenditure not included in the approved annual budget estimates shall not be undertaken unless it passes through a proper legislative process of supplementary budget allocation,^{xxvi} the legislative rule

has a direct bearing on the issuance and resolution of judgments that are imposed on the local Government.^{xxvii}

The Judicature and Application of Laws Act (JALA), [Cap. 358 R.E. 2023]

The Judicature and Application of Laws Act,^{xxviii} establishes the jurisdiction and foundational laws applied by the high court and subordinate courts of Tanzania, incorporating the principles of common law and doctrines of equity under Section 2(3) of the Judicature and Application of Laws Act,^{xxix} among these doctrines is the principle of judicial review and the power to issue prerogative orders, such as the Order of Mandamus.

When a Local Government uses its statutory immunities to avoid paying a Certificate of Order, judgment creditors frequently return to the courts under JALA to seek an Order of Mandamus to compel the council's accounting officer to perform their statutory duty.

The Magistrates' Courts Act, [Cap. 11 R.E. 2023]

Magistrates Courts Act,^{xxx} provides for the civil jurisdiction, area of operation, and powers of the Subordinate courts including Primary Courts, District Courts, and Resident Magistrates' Courts in Tanzania. The commercial and civil disputes concerning the District Councils are dealt with by the Subordinate courts under sections 18 and 22 of the Magistrates Courts Act.^{xxxi} However, Section 42 of the Magistrates Courts Act,^{xxxii} makes the execution of decrees in Subordinate courts subject to the general limitations imposed by the Civil Procedure Code and the Government Proceedings Act.^{xxxiii}

Procedure of executing of court decrees against the district councils in Tanzania.

Generally the law prohibit execution, attachment or any coercive means of court decree against the district councils as per section 17(1) of the government proceeding Act,^{xxxiv} and similar provided under section 199 of the Local Government (authority) act,^{xxxv} it is on the effect that no attachment, execution and any coercive means against the district councils. But according to section 17(2) of the government proceeding Act,^{xxxvi} provide for the requirement of application of Certificate of Order.

The "Certificate of Order" is the particular statutory process that has been put in place to supersede direct execution proceedings in litigation against public entities in Tanzania. This is a document issued by the registrar of the High court or deputy registrar of the high court that makes the decision following a judgment against a public body, pursuant to Section 17(2) of the Government Proceedings Act.^{xxxvii} The certificate is a formal statement of the final order of the court and includes any financial damages or costs imposed on the public defendant. Once issued, it must be officially served on the accounting officer of the debtor institution by the judgment creditor as per section 17(2) of the Government Proceeding Act.^{xxxviii}

The main purpose of the Certificate of Order is to give formal, administrative notice to the appropriate public officials of a debt. It

is an official request for payment, shifting enforcement from courtroom to internal administrative processes of the public body.

Challenges facing decree holders in execution of court decree against the district councils in Tanzania.

Absolute Prohibition on Forced Execution and Asset Seizure

Statutory prohibition on any form of compulsory enforcement procedures. Based on the regular civil procedure guidelines, a judgment creditor has an immediate recourse to attachment, sale, and garnishee orders through Order XXI of the Civil Procedure Code.^{xxxix} This system gives the leverage of court brokers being able to seize the assets of the defaulter immediately.

According to section 17(3) of the Government Proceedings Act,^{xl} nullifies the above mentioned advantage since the act gives statutory immunity to local Government. In the case of Vitus T. Mpemba v. The Attorney General and Another,^{xli} was held that public accounts and property are fully exempted from attachment by a court. This means that the law leaves the decree holder with no means of compelling the reluctant local Government to pay judgment debt.

Statutory Silence on Satisfaction Timelines

According to Section 17(2) of the Government Proceedings Act,^{xlii} provides an administrative process to be followed when delivering the Certificate of Order to a particular accounting officer of the state to pay the amount certified from the funds available. The major deficiency in the legislation is the lack of the specified deadline for paying the certified amount. While the statute says how a certificate should be delivered, it fails to say when it should be done.^{xliii}

Also, the act excludes a possibility to deliver the writ of mandamus to an individual accounting officer who has not received the appropriation of the money by Parliament. Thus, the legislation leaves room for endless delays.

Delay in obtaining the fruits of the judgment

This is perhaps the most important practical legal challenge. A decree may be final and enforceable, but the decree-holder may have to undertake additional proceedings to obtain payment rather than immediately attaching assets. The legal right established by the decree therefore does not necessarily translate into immediate recovery.

Appeals and applications for stay of execution.

A local Government may challenge the decree through an Appeal or seek a stay of execution. The Civil Procedure Code contains mechanisms concerning stay of execution and the effect of Appellate proceedings. Office of the Attorney General, The decree-holder therefore needs to establish whether: the decree is final, there is a pending Appeal, a stay has actually been granted; and, the decretal amount remains outstanding. A mere intention to Appeal is not necessarily the same thing as a legally effective stay.

Recommendations on Challenges Facing Decree-Holders in Execution of Court Decrees against District Councils in Tanzania.

¹ Ibid.



Establish a clear statutory time limit for payment

The Government proceeding Act,^{xiv} and Local Government (Authority) Act,^{xv} should prescribe a specific period within which a local government must satisfy a final court decree after receiving the Certificate of orders. This would reduce prolonged delays and give decree-holders a clear basis for seeking further judicial intervention where payment is not made.

Strengthen enforcement of the District Executive Director's obligation

According to Section 199 of the Local Government (District Authorities) Act,^{xvi} and section 17 of the Government Proceedings Act,^{xvii} places an obligation on the District Executive Director to cause payment of the decretal amount from the local Government revenue, this obligation should be accompanied by an effective enforcement mechanism where an officer fails to comply without lawful justification.

Create a dedicated budget for court decrees

The Local Government should be required to make annual budgetary provisions for outstanding court judgments and decrees. This would prevent a situation where a decree-holder has a final judgment but the local Government claims that there are no funds available for payment.

Maintain a register of outstanding court decrees.

Every local government should maintain an updated register of judgments and decrees against the local government, indicating: the case number, amount awarded, interest and costs, date of judgment, whether there is an appeal or stay, amount already paid, and outstanding balance. Such a register would improve transparency and financial planning.

Expedited procedure for decree-holders

The courts should consider an expedited procedure for applications concerning satisfaction of decrees against local government authorities. Where liability has already been conclusively determined, the decree-holder should not be required to undergo unnecessarily lengthy proceedings merely to obtain payment.

Improve cooperation between courts and Local Government.

District Councils should designate responsible legal and financial officers to ensure that court judgments are acted upon promptly. Once a decree becomes enforceable, the local Government should communicate with the court and decree-holder concerning the amount payable and proposed payment arrangements.

Introduce consequences for unjustified delay

Where a Council deliberately or unjustifiably delays satisfying a final decree, the law should provide effective consequences, subject to the statutory protections applicable to the local Government. This would discourage administrative inaction while preserving the special legal protection against ordinary attachment of public property.

Protect decree-holders from indefinite accumulation of debt

Where payment is delayed, the applicable rules on interest on the decretal amount should be clearly applied automatically. This can

reduce the incentive to delay payment and ensure that the decree-holder is not unfairly deprived of the value of the judgment.

Increase legal awareness among local government officials

The local Government officials should receive training on, the legal effect of court judgments, procedures for satisfying decrees, consequences of ignoring court orders, budgeting for judgment debts; and the distinction between an ordinary dispute and a final enforceable decree.

Establish mechanisms for negotiated settlement

Where appropriate, Local Government and decree-holders should be encouraged to agree on structured payment plans, particularly where immediate payment of the entire decretal amount would seriously affect Council operations. Any arrangement should preserve the decree-holder's legal rights and be properly documented.

Strengthen judicial supervision of compliance

Courts should have an effective mechanism for monitoring compliance with orders concerning satisfaction of decrees against local government. This would help ensure that a successful litigant obtains the practical benefit of the judgment rather than merely holding a paper judgment.

Conclusion

Decree-holders face significant challenges in enforcing court decrees against Local Government due to legal restrictions, delays in payment, and financial constraints. Therefore, there is a need for clear enforcement procedures, timely payment, proper budgeting, and stronger judicial supervision to ensure decree-holders receive the benefits of their judgments. The protection afforded to public property is important for the continued provision of public services, but such protection should be balanced against the constitutional and legal principle that a judgment of a competent court should have practical effect. Effective enforcement mechanisms would therefore promote both responsible management of public resources and the rights of decree-holders to obtain the benefit of judgments lawfully issued in their favour.

ENDNOTES

ⁱ The Civil Procedure Code [CAP. 33 R.E. 2023].

ⁱⁱ Ibid.

ⁱⁱⁱ Ibid

^{iv} PETER, C. M. (2020). *Civil Procedure in Tanzania: A Student's Companion*. Law Africa Publishing

^v Execution of court decree 28 September 2026 at 0400hrs at <https://www.google.com/search> on 22 July 2026

^{vi} Decree holder 28 September 2026 at 0400hrs at <https://www.google.com/search> on 28 September 2026

^{vii} [Cap. 287 R.E. 2023]

^{viii} The Constitution of the United Republic of Tanzania, 1977

^{ix} Ibid, Under Article 13(1)

^x Constitution of the United Republic of Tanzania, 1977.

^{xi} Ibid, Under Article 107A(1)

^{xii} The Local Government (Authority) Act [Cap. 287 R.E.

2023]

^{xiii} Ibid

^{xiv} Mvungi, S. E. (2021). Corporate Personality vs. Sovereign Immunity: The Dilemma of Executing Decrees against Local Government Authorities in Tanzania. *The African Review of Law and Jurisprudence*, 14(1), 45–68.

^{xv} The Civil Procedure Code [Cap. 33 R.E. 2023]

^{xvi} Ibid

^{xvii} Ibid

^{xviii} The Public Financial Act [Cap. 348 R.E. 2023].

^{xix} Ibid

^{xx} The Local government finances Act [Cap. 290 R.E. 2023].

^{xxi} Ibid

^{xxii} Ibid

^{xxiii} Mvungi, S. E. (2021). Corporate Personality vs. Sovereign Immunity: The Dilemma of Executing Decrees against Local Government Authorities in Tanzania. *The African Review of Law and Jurisprudence*, 14(1), 45–68.

^{xxiv} The Budget Act, [Cap. 439 R.E. 2023].

^{xxv} Ibid Under section 24.

^{xxvi} Ibid

^{xxvii} Tarimo, A. S. (2022). Fiscal discipline vs. judicial finality: The impact of mid-year statutory bans on unbudgeted municipal liabilities in Tanzania. *Dar es Salaam Law Journal*, 19(1), 112–138.

^{xxviii} [Cap. 358 R.E. 2023]

^{xxix} Ibid

^{xxx} The Magistrate Court Act [Cap 11 R.E 2023.]

^{xxxi} Ibid

^{xxxii} Ibid

^{xxxiii} Ibid

^{xxxiv} [Cap. 5 R.E. 2023]

^{xxxv} [Cap 287 R. E2023]

^{xxxvi} Ibid

^{xxxvii} The Government Proceeding Act [Cap. 5 R.E. 2023].

^{xxxviii} Ibid

^{xxxix} The Civil Procedure Code [Cap. 33 R.E. 2023].

^{xl} The Government Proceedings Act [Cap. 5 R.E. 2023]

^{xli} [1990] TLR 32 (HC).

^{xlii} The Government proceeding Act, [Cap. 5 R.E. 2023]

^{xliii} Ibid

^{xliv} The Government proceeding Act [Cap 5 R.E 2023]

^{xlvi} The local Government (authority) Act [Cap 287 R.E 2023]

^{xlvi} Ibid

^{xlvi} The Government proceeding Act, [Cap. 5 R.E. 2023]