IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: NDIKA, J.A., MWANDAMBO, J.A., And KENTE, J.A.)

CIVIL APPLICATION NO. 294/16 OF 2017

NATIONAL HOUSING CORPORATION ..... APPLICANT

VERSUS

1. PETER KASSIDI
2. HAMISI LUSWAGA
3. CHRISTOPHER SEME
4. MSOLOPA INVESTMENT CO. LIMITED
5. ESTHER BERNARD KOMBE
..... RESPONDENTS

(Application for Revision of the judgment and Decree of the High Court of Tanzania (Land Division) at Dar es Salaam)

(Wambura, J.)

dated the 23rd day of February, 2016
in
Misc. Land Appeal No. 155 of 2014

RULING OF THE COURT

19th & 27th July, 2022

KENTE, J.A.:

In order to avert the danger of losing focus and acting as a catalyst for endless litigation as it inadvertently occurred to the learned judge of the first appellate court, we propose in this ruling to limit ourselves within the confines of the narrow-gauged but very cardinal question as to whether, in terms of Order XXI Rule 62 of the Civil Procedure Code (hereinafter "the CPC") a remedy of appeal is open to a party against whom an order is made by the court following objection to the attachment of property in execution of a court decree.

Commensurate with the above-stated undertaking, it behoves us to preface our ruling with an instructive observation made nearly 100 years ago by the renown American jurist and Associate Justice of the American Supreme Court the late Benjamin Nathan Cardozo in his book "The Growth of the Law", Universal Law Publishing Co. PVT. Ltd 2008 at page 60. Notably, the learned author believed sincerely that events were very likely, in accordance with human nature, to repeat themselves at some point in future. Essentially, it is that belief which forms the philosophical foundation of the key doctrine of precedent which all lawyers hold in high regard. Bearing in mind the working philosophy for appellate Judges under the common law tradition where appellate courts are considered as carrying precedential authority in their decisions, the learned Author who is one of the most respected and revered American Judges succinctly observed that;

> *"Ninetenths, perhaps more, of the cases that come before a court are predetermined-predetermined in the sense that they are predestined–their fate pre-established by inevitable laws that follow them from birth to death."*

We find the above-quoted observation not only informative but it also has a compelling bearing on the final determination of this

application and we shall, therefore, do what we think the learned judge of the first appellate court ought to have done.

On 6th July, 2017 the applicant National Housing Corporation lodged in this Court a Notice of Motion praying that the decision of the High Court (Land Division) sitting at Dar es Salaam, dated 23rd February, 2016 in Miscellaneous Land Appeal No. 155 of 2014 be revised on the grounds, *inter alia*, that, the said court had no jurisdiction to entertain an appeal which emanated from the decision and order of the Kinondoni District Land and Housing Tribunal (hereinafter "the DLHT") determining objection proceedings in Miscellaneous Application No. 278 of 2014. The Notice of Motion is accompanied by an affidavit deponed by the applicant's Corporation Secretary one Martin Mdoe. Happily, the facts leading to the institution of the present application are largely not in dispute. In a nutshell, they are as follows:

Following the decision made by the Ward Tribunal for Bunju in Shauri Namba 94/2004 which upheld the claim by the present first, second and third respondents herein namely Peter Kassidi, Hamisi Luswaga and Christopher Seme the lawful owners of a piece of land known and described as Farm No. 1854 Magereza Area Boko, Kinondoni District, Dar es Salaam Region (hereinafter "the suit property"), the said

respondents applied to the DLHT seeking to execute the decree arising from the said decision. However, deploying the professional legal services of Mr. Elisa Abel Msuya learned advocate by way of Miscellaneous Land Application No. 278 of 2014, the fifth respondent together with twenty-three other persons successfully applied for stoppage of the execution process initiated by the 1st, 2nd and 3rd respondents. Her complaint was based on the allegations whose substance was that, she was not a party to the suit giving rise to the decree sought to be executed and that the suit property was acquired and developed by the applicant corporation who had constructed several housing units and sold one each to twenty four persons including herself.

After hearing the parties, the learned chairman of the DLHT was very expeditious. He sustained the objection and simultaneously nullified the proceedings before the Ward Tribunal and quashed and set aside the resultant decision. Dissatisfied with the decision of the DLHT, the first three respondents herein successfully appealed to the High Court (Land Division) which allowed the appeal and quashed the ruling and set aside the orders made by the DLHT. It is that decision of the High Court which the applicant has now moved this Court to rescind by way

of revision. As briefly alluded to earlier, the learned judge of the High Court is faulted for allegedly entertaining the said appeal contrary to the dictates of Order XX1 Rule 62 of the CPC.

During the hearing of the application before us, whereas Mr. Aloyce Sekule learned Principal State Attorney teaming up with Messrs. Daniel Nyakiha and Joseph Tibaijuka both learned State Attorneys appeared to prosecute the applicant's case, the first second and third respondents were represented by Mr. Roman Selasini Lamwai, learned advocate. The fifth respondent was represented by Mr. Joan Ignace Laswai, learned advocate while, despite being duly served with a notice of hearing, the fourth respondent was conspicuously but unsurprisingly absent. In the circumstances, the matter had to proceed to hearing in her absence under Rule 63(2) of the Tanzania Court of Appeal Rules, 2009 (hereinafter "the Rules").

In view of the conclusion we have arrived at on the propriety or otherwise of the appeal before the High Court from which the present application originates, we have found it imperative, in exercise of the Court's revisional powers under section 4(2) of the Appellate Jurisdiction Act, (Cap 141 R.E 2019) (hereinafter "the AJA") to examine the propriety of the appeal which was preferred to challenge the decision of

the DLHT. To recapitulate, the learned High Court judge is challenged on the basis of the argument that the appeal before her was not tenable in terms of Order XXI Rule 62 of the CPC.

However, it was strongly submitted on behalf of the first, second and third respondents that the decision by the DLHT was appellable to the High Court in terms of section 38(1) of the Land Disputes Courts Act (Cap 216 R.E 2019). The above-stated argument was predicated on yet another argument by Mr. Lamwai who submitted that the decision of the DLHT in Misc. Land Application No. 278 of 2014 was a revisionary order vacating the decision made by the Ward Tribunal and not a ruling on objection proceedings as erroneously argued by Mr. Sekule, hence appellable under the law.

After going through the lower courts' record, we entertain no doubts whatsoever, that the appeal before the High Court was indeed misconceived in law. Having emanated from the decision of the DLHT, in terms of Order XXI Rule 62 of the CPC, it was not appellable as we shall hereinafter demonstrate.

As earlier indicated, we start, albeit very briefly, from the background of this dispute which is marked by vicious battles between the parties. The deep-seated cause why the then beleaguered fifth

respondent had to lodge a complaint with the DLHT is very clear as to admit of no controversies. It was after she was dragged willy-nilly into this dispute by an eviction order against the real judgment-debtor, one Joseph Hayila, which signified that the 5th respondent and other purchasers of the housing units erected on the suit property were required to vacate or risk being evicted. Accordingly, they were approached by a court broker namely M/S Rhino Investment Company Ltd who intended to evict them in execution of the decree allegedly issued by the Ward Tribunal. From there, it is on record that the fifth respondent who was not a party to the suit before the Ward Tribunal moved the DLHT under Order XX1 Rules 57(1), (2), 58 and 59 of the CPC to investigate the propriety or otherwise of the execution proceedings preferred by the present first, second and third respondents in the said District Tribunal.

While this Court is aware that in addition to making orders holding in abeyance the execution process, the learned chairman of the DLHT went a step further and made another order in exercise of his revisionary powers, we are of the settled view that, by itself, that order did not change the nature of the proceedings initiated by the fifth respondent. The revisionary order made by the learned chairman of the

DLHT could not hide the fact that, in the eyes of the law, those were and remained to be objection proceedings and upon their conclusion, the provisions of Order XXI Rule 62 of the CPC which, by virtue of section 51(1) of the Land Disputes Courts Act (Cap 216 R.E 2019) is the applicable law in the circumstances of this case, would have come into play. The above cited law provides that:

> *"Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute but, subject to the result of that suit if any, the order shall be conclusive."*

It occurs to us that the settled view that we took in our earlier decisions in **Kezia Violet Mato v. The National Bank of Commerce and three Others,** Civil Application No. 122 of 2005 (unreported) and **Mohamed Enterprises Tanzania Ltd v. The Tanzania Investment Bank Ltd and Others** [2012] 1 EA 173 had created a situation of what Benjamini Cardozo called the "inevitable law" which must now determine the destiny of the case under scrutiny.

Going by the above-cited two authorities, we take it to be firmly established law that, pursuant to Order XXI Rule 57(1) of the CPC,

where an objection is preferred and an order determining that objection is subsequently made, in terms of Rule 62 of the same Order, the only remedy available to the party against whom that order is made is to institute a regular suit to prove his claim. Put in other words, after the decision on an objection proceeding has been made by a competent court, there is no remedy for appeal or revision. The rationale behind the above-stated stance of the law is not farfetched. We hope that it will be immediately appreciated even by the doubting Thomases that, not emanating from a suit, an order determining objection proceedings is not appellable. (see **Ibrahim Mohamed Kabeke v. Akiba Commercial Bank and Another,** Civil Application No. 71 of 2004 c/f No. 141 of 2004 (unreported)

All said and done, we find the present application to have merit. In the circumstances, as the only issue raised by this application is well settled by case-law, we are constrained to agree with the applicant that indeed it was not open to the High Court judge to entertain an appeal from a non appellable decision of the DLHT. As rightly submitted by Mr. Sekule the appeal was misconceived for want of jurisdiction.

In the circumstances, we nullify the incompetent proceedings before the High Court, and quash and set aside the resultant orders. As

the irregularities culminating into this revisional order were mainly attributable to the High court's inadvertence, we make no order as to costs.

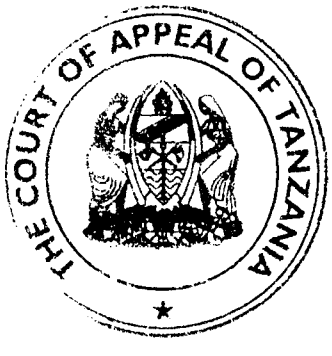
DATED at **DAR ES SALAAM** this 26th day of July, 2022.

G. A. M. NDIKA
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

The Ruling delivered this 27th day of July, 2022 in the presence of Mr. John Laswai holding brief of Mr. Aloyce Sekule, for the Applicant and Ms. Mary Lamwai, learned Counsel for the first, second and third Respondents and Mr. John Laswai, learned Counsel for the fifth Respondent, is hereby certified as a true copy of the original.



G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL