

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**LAND APPEAL NO. 58 OF 2020**

*(Arising from decision of the District Land and Housing Tribunal for Mara ta Musoma in Misc. Application No. 40 of 2020, originating from Application No. 98 of 2016 and Misc. Application No. 12 of 2017)*

- 1. WANSHARA MAKORI ..... 1<sup>ST</sup> APPELLANT**  
**2. MAKIRE AUCTION MART  
AND COURT BROKER ..... 2<sup>ND</sup> APPELLANT**

***VERSUS***

- 1. MODESTA WILLIAM ..... 1<sup>ST</sup> RESPONDENT**  
**2. ZAWADI LUCAS ..... 2<sup>ND</sup> RESPONDENT**  
**3. MATIKO MAGIGE ..... 3<sup>RD</sup> RESPONDENT**  
**4. MANG'ANGA WAMBURA ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

*13<sup>th</sup> and 13<sup>th</sup> October, 2020*

**KISANYA, J.:**

This appeal arises from the objection of attachment proceedings filed under Order XXI, rule 57 of the Civil Procedure Code 1966, Cap. 33, R.E 2002 (the CPC) and granted by the District Land and Housing Tribunal for Mara at Musoma in Misc. Application No. 40 of 2020.

Upon receiving the petition of appeal, the respondents have raised a preliminary objection the following point of law:

- 1. That, the appeal is improperly filed contrary to Order XXI, rule 62 of the Civil Procedure Code, Cap. 33, R.E. 2019.*

When this matter was placed before for hearing, the appellant appeared in person while the respondents were represented by Mr. Ostack Mligo, learned advocate.

Submitting in support of the preliminary objection, Mr. Mligo argued that, rulings or orders arising from the objection of attachment proceedings are not appealable. Citing the provision of Order XXI, Rule 62 of the Civil Procedure Code, Cap. 33, R.E. 2019 (the CPC), the learned counsel contended that, the proper remedy for the appellant was to file a suit to establish her right over the property in dispute. He concluded by moving the Court to dismiss the appeal with costs.

The respondent being a lay person had nothing to reply. She was of the firm that, she was entitled to appeal against the ruling issued in the objection proceedings.

At the outset, I find it pertinent to reproduce the provision of Order XXI, Rule 62 of the CPC, which is the basis of the preliminary objection raised by the respondents. The said provision provides as follows:

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

(Emphasize supplied)

Reading from the above cited provision, it is apparent that, an order arising from the objection proceedings is conclusive and hence, not appealable. Further, the proper recourse for a person aggrieved by such order is to institute a suit and establish his or her right to the property in dispute. See also the case of **Sea Saigon Shipping Limited vs Mohamed Enterprise Tanzania Limited**, Civil Appeal No. 37 of 2005, CAT at Dar es Salaam (unreported) where the Court of Appeal held that:

*“At any rate, it could not be appealed against by virtue of Order XX, Rule 62 which declares findings in objection to be final unless ordered otherwise in a subsequent suit.”*

In the present appeal, the appellant challenges the decision of the Tribunal in respect of the objection proceedings. The said decision was to the effect that, the properties attached in Miscl. Application No. 12 of 2017 were wrongly attached. In view of the above position of law, the appellant was required to file a suit for the title of the properties in dispute and not to prefer the present appeal.

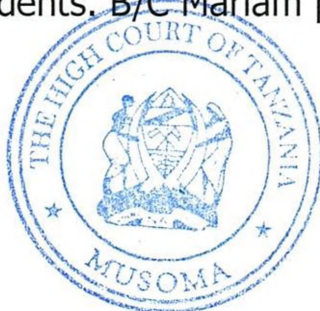
It is for the foresaid reason that, the Court sustains the preliminary objection on point of law raised by the respondent. In the result, the appeal is hereby struck out for being incompetent. Each party shall bear its own costs.

DATED at MUSOMA this 13<sup>th</sup> day of October, 2020.



  
E. S. Kisanya  
JUDGE

COURT: Ruling delivered in Chambers this 13<sup>th</sup> October, 2020 in the presence of the appellant in person and Mr. Ostack Mligo learned advocate for the respondents. B/C Mariam present.



  
E. S. Kisanya  
JUDGE  
13/10/2020