

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**LAND DIVISION**

**(APPELLATE JURISDICTION)**

**LAND REVISION NO. 1 OF 2021**

(Arising from Misc. Land Application No. 105 of 2019 of the District Land and Housing Tribunal of Kigoma before M. Mwinyi Chairman, Misc. Land Application No. 98/2016 of the District Land and Housing Tribunal of Kigoma before M. Mwinyi, Chairman, Original Land Dispute No. 7/2016 of the Buhanda Ward Tribunal)

**SEMBULI S/O ALLI NDAGIWE..... APPLICANT**

**VERSUS**

**MWEZI S/O RAMADHAN.....RESPONDENT**

**R U L I N G**

05<sup>th</sup> & 05<sup>th</sup> July, 2021

**A. MATUMA, J.**

The applicant was an objector in the execution proceedings at the District Land and Housing Tribunal which arose from the judgment of Buhanda Ward Tribunal between the respondent and one Hamis I. Ruchela. The dispute between those parties was on ownership of un-surveyed plots at the Locality. The respondent became the decree holder against the said Hamis I. Ruchela.

During the execution it is alleged that the respondent sought to evict the applicant on the dispute land on the basis of the trial ward tribunal's judgment. The applicant having not been heard in the original suit as a

Party, and having claims of interest in the dispute land filed objection proceedings against the execution. He claimed to have bought the dispute land from one Dominiki Gabriel Sika who was as well not a party to the original suit. The objection proceedings were unsuccessful hence this application for Revision.

At the hearing of this application, the applicant was present in person and had the service of Mr. Sadiki Aliko learned advocate. The respondent was present in person unrepresented.

Before I could hear the application on merits, I probed the parties to address me on the competence of this application. I wanted to satisfy myself as to whether Revision proceedings is the appropriate remedy to a person against whom the order in the objection proceedings was made. Mr. Sadiki Aliko learned advocate at first tried to stand firm that this application is competent as the tribunal chairman abrogated the guidelines in the investigation of claims on objection proceedings and thus this revision should be heard to direct the tribunal below matters to be considered in the investigations of claims. Even though after some discussions on what would be the last order of this court in relation to the property in dispute, whether I would be positioned to declare his client the rightful owner of the dispute property and whether this is not an appeal

in disguise, the learned advocate changed his stand and prayed to withdraw this application so that his client goes to institute a fresh suit.

The respondent on his party had nothing more but joining hands with the learned advocate for the applicant that this application be withdrawn.

It is quite clear that under (order XXI Rule 62 of the Civil Procedure Code, Cap. 33 R.E. 2019, the order in the objection proceedings is conclusive and thus not appealable. The aggrieved party is however allowed to institute a fresh suit to establish the right which he claims over the property. The said provision reads;

*'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 such suit, if any, the order shall be conclusive'*

In the circumstances of the herein quoted provision, the order in the objection proceedings is final subject to any result of the fresh suit if so preferred. The order in the objection proceedings shall thus be always there or made redundant by any decree in its negative, of a fresh suit which has been instituted after the failure of the objection. One cannot therefore prefer application for Revision like the instant application.

In the case of **Koretha d/o Makoye and Makoye s/o Kintoki versus Amos s/o Maganga**, Misc. Civil Case No. 2 of 2004, High Court at Tabora, Hon. Justice Mujulizi at page 9 held;

*'It is clear the order sought to be appealed from in this court is not appealable... **It was open to the appellant to file a suit in relation to the property**.'*

Also, in the case of **Amour Habib Salum versus Hussein Bafagi**, Civil Application No. 76 of 2010, the Court of Appeal nullified the decision of the High Court which had entertained an appeal from objection proceedings. The court of appeal in that regard held;

*'The law is quite clear. An order which is given in a determination of objection proceedings is conclusive. A party who is aggrieved thereby and intends to pursue the matter further has no right of appeal. **The course that is open to him or her is to file a suit to establish the right he/she claims to the property in dispute**.'*

In that respect the applicant ought to start a fresh suit to establish his claim in the property. The rationale behind is quite open. It is to give him the right to be heard fully of his claims in the property and accord the adverse party opportunity to cross examine and adduce evidence on her party in defence of the property in dispute. Thereafter the court to determine the matter in its merit unlike in the objection proceedings

where formal evidence would not normally be given nor subjected to the tests in regard to admissibility of evidence.

Revision proceedings as per cited law would only be resorted to, when there are illegalities or inappropriateness of the proceedings of the court below and not on the refusal of the objection proceedings in its merits. Whether or not the claim in the objection was properly investigated by the lower court, that is not illegalities which may be subjected to Revision jurisdiction of the superior court. With the herein observations this application is incompetent and accordingly struck out. No orders as to costs. It is so ordered. Right of appeal against this decision is fully explained.



**A. Matuma**

**Judge**

**05/07/2021**

**Court:** Ruling delivered in the presence of the respondent and in the absence of the applicant and his advocate.

**Sgd: A. Matuma**

**Judge**

**05/07/2021**