

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**AT MOROGORO**

**CIVIL REVISION NO.02 OF 2022**

*(Arising from Misc. Application No. 54 of 2021: District Court of Morogoro by Hon. R.R.  
Kasele, SRM)*

**ELIZABETH KULWA KIBUSHI ..... APPLICANT**

**VERSUS**

**MARIANA MASHIRI PETRO..... 1<sup>ST</sup> DEFENDANT**

**SELEMAN MAGULU GONYANI .....2<sup>ND</sup> DEFENDANT**

**RULING**

*Hearing date on: 21/6/2022*

*Ruling date on: 05/7/2022*

This application is intended to invite this court, among others to call upon the records in Misc. Application No. 54 of 2021 from Morogoro District Court and examine its legality and or propriety of its proceedings and revise accordingly. The application is supported by an affidavit comprising detailed contents including jurisdiction of the trial court, the doctrine of res judicata and abuse of court proceedings.

However, prior to hearing of the application and both parties being represented by learned advocates, a preliminary objection was preferred by the 1<sup>st</sup> respondent that is Mariana Mashiri Petro, through her advocate Hassan Nchimbi. The application being encountered by an objection, obvious the law is certain that such objection must first be determined. As such on the hearing date of the preliminary objection,



Mr. Ignas Punge appeared for the applicant, while Hassan Nchimbi assisted by Pendo Mtebe appeared for the respondents.

In arguing the objection, Mr. Nchimbi rightly cited Order XXI Rule 62 of the Civil Procedure Code that the objection proceedings are neither appealable nor revision may arise from it. Thus, the application is misconceived same should be dismissed by a dismissal. Supported his argument by citing the precedent in the case of **Sosthenes Bruno & Another Vs. Flora Shauri, Civil Appeal No. 249 of 2020.**

In turn the applicant's advocate Mr. Ignas Punge stood firm by pointing two reasons which justified the validity of the application in this court. The first reason was to the effect that the trial court had no jurisdiction over the suit because the objection proceedings filed before the trial court was incompetent for same ought to be filed at the Primary Court seized with jurisdiction as was the one passed the decree.

Second reason was on who should institute a fresh suit between the claimant or the objector? He supported his argument by the case of **Khalid Hussein Muccadam Vs. Ngulo Mtiga and Another, Civil Application No. 234/17 of 2019.** Concluded by inviting this court to struck out the objection and proceed with the application on merits.

Both advocates have argued this objection quite rightly with relevant authorities. Without much I can labour on this point, I think the law is settled that objection proceedings are not appealable as per Order XXI Rule 62 of CPC which I Quote: -

*62. 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.***

The question is whether the application is caught under that rule? Second when the objection proceedings are filed and determined by a court lacking jurisdiction and or the matter is caught under the doctrine of *res judicata*, same may be final and conclusive? To answer the first question, I need first to answer the second question. The reason is statutory, that whatever decision made by a court/tribunal lacking jurisdiction, such decision is as if it never existed.

The cornerstone of any judicial decision is jurisdiction, otherwise there shall be no valid decision if same is made by a court lacking jurisdiction. Jurisdiction of a court is sacrosanct that, the issue takes precedence over every other issue in the proceedings when it is raised. It is now settled that, in the proceedings the first thing the court has to determine before adjudicating on any matter is its jurisdiction. (See the case of **Maisha Mchunguzi Vs. Sabscania (T) Branch; Civil Appeal No. 41 of 1998**).

The Court of Appeal insisted in the case of **Fanuel Mantiri Ng'unda Vs. Herman M. Ng'unda & Others [1995] T.L.R 155** that:-

*"The question of jurisdiction of any court is basic, it goes to the very root of the Court to adjudicate upon cases of different nature. The question of jurisdiction is so fundamental that courts must as matter of practice on the face of it be certain and assured of their jurisdictional position at the*



*commencement of the trial. It is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon the case"*

I find no difficult to reason that all courts in Tanzania are creatures of statute and their jurisdiction is purely statutory. Parties, however jurist may be, cannot confer jurisdiction to the court of law. Therefore, no court may assume jurisdiction, which does not have.

Having laid such legal foundation, then to answer the second question asked above, with no uncertain terms, once the suit is instituted in a court without jurisdiction, in law it means, there was nothing before that court. In fact, in law is equal to a nonexistent. Thus, whatever decision or decree or order born out of a court lacking jurisdiction, becomes nullity, because there shall be no valid decision or decree or order on a no existing matter.

Upon answering the second question, yet the first question remains, whether this application is caught in the web of rule 62 of Order XXI? To answer it safely, this question demand hearing of the application on merits. The applicant has raised three pertinent legal issues in his affidavit, that is, jurisdiction of the trial court; *res judicata* of the matter and abuse of the court process as per paragraph 9. Therefore, without prejudice to the merits of the application itself, I find important to allow the applicant to be heard on this application instead of prohibiting her from this point of law.

In the light of this application, I am certain, is inevitable the applicant should be heard on merits; therefore, the objection is overruled, each party to bear his own costs.



**Order accordingly.**

**Dated at Morogoro in Court Chambers this 5<sup>th</sup> July, 2022**



**P. J. NGWEMBE**

**JUDGE**

**05/7/2022**

**Court:** Ruling delivered at Morogoro in Chambers on this 5<sup>th</sup> day of July 2022 in the presence of the applicant in person and in the presence of Mr. Hassan Nchimbi and Upendo Mtebe Advocate for Respondents.



**P. J. NGWEMBE**

**JUDGE**

**05/7/2022**