

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

**SONGEA DISTRICT REGISTRY**

**AT SONGEA**

**DC, CIVIL APPEAL NO. 7 OF 2022**

*(Arising from the Ruling of Misc. Civil Application No. 03 of 2022 dated 31/5/2020 in the District Court of Songea, original Civil Case No. 8/2021)*

**DR. ANDREW KYANDO ..... APPELLANT**

**VERSUS**

**JUMA SHABANI KANGANYA ..... 1<sup>ST</sup> RESPONDENT**

**ABRAHAM PETER MOSILE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Date of last Order: 30/08/2022**

**Date of Ruling: 30/08/2022**

**MLYAMBINA, J.**

In terms of *Order XXI Rule 57 (1) and (2) of the Civil Procedure Code [Cap 33 R.E. 2022]*, the 1<sup>st</sup> Respondent herein moved the District Court of Songea at Songea objecting the attachment and sale of a house located at Plot No. 413 Block A Ruhuwiko Kanisani, Songea Municipality. Upon entertaining the objection proceedings, the District Court granted it. The attachment of Plot No. 413 Plot A (*supra*) was lifted and the execution order dated 24<sup>th</sup> June, 2021 was vacated. The Appellant herein was ordered to search and find any other property of the 2<sup>nd</sup>

Respondent herein for the purpose of attachment and sale so as to satisfy his decree.

Being aggrieved with the afore decision, the Appellant preferred this Appeal on five grounds. The Respondent, however, upon being served with the memorandum of appeal lodged a *plea in limine litis* to the effect that:

The appeal before this Court is untenable since it arises from the decision which cannot be appealed under *Order XXI Rule 62 of Civil Procedure Code [Cap 33 R.E. 2002]*.

On 30<sup>th</sup> day of August, 2022, when the appeal was called for hearing, upon being probed by the Court on the merits of the legal objection, learned Counsel Kitara Mugwe for the Appellant conceded with the objection but prayed for waiver of costs, a prayer which was not objected by Counsel Makame Sengo for the Respondents.

From the above state of facts, the central issue is; whether a decision on objection proceedings is appellable in terms of the provisions of *Order XXI Rule 62 of the Civil Procedure Code (supra)*.

As conceded by Counsel Kitara Mugwe, in terms of *Order XXI Rule 57 – 62 (supra)*, a person who possess or have an interest on any

property subject of attachment, may file an application in Court objecting such attachment order or decree. The law requires an application by way of chamber summons supported with an affidavit be filed in Court which passed the decree. In terms of *Order XXI Rule 58 of the Civil Procedure Code (supra)*, the objector must give evidence that he has interest or he possess the attached property. The standard of proof is on balance of preponderance just like in any other civil proceedings.

In terms of *Order XXI Rule 62 (supra)*, the Court orders in objection proceedings are final, conclusive and not appealable. The same position was reached in the case of **Thomas Joseph Kimaro v. Apaisaria Martin Carl Mkumbo and Oscar Carl Mushi** [2002] TRL 369. The aggrieved party, the Appellant in this case, has the right to institute a fresh suit for the title of the wrongly seized property. The same has to be done in the competent Land Court in terms of *section 167 of the Land Act [Cap 113 R.E. 2019]*, *section 33(2) (a) or 37(1) of the Land Disputes Courts Act [Cap 216 R.E. 2019]*.

In the circumstances, the objection is hereby sustained. Consequently, the appeal is dismissed for being incompetent before the Court.



**Y.J. MLYAMBINA**

**JUDGE**

**30/08/2022**

Ruling delivered and dated 30<sup>th</sup> August, 2022 in the presence of learned Counsel Kitara Mugwe for the Appellant and Makame Sengo for the Respondents.



**Y. J. MLYAMBINA**

**JUDGE**

**30/08/2022**