

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

LAND APPEAL No. 59 OF 2021

*(Arising from the District Land and Housing Tribunal for Mwanza at Mwanza in
Misc. Land Application No. 48C of 2017)*

HAMISA MUSSA----- APPELLANT

VERSUS

SUKARI IZUNGILO MARIBATE-----1st RESPONDENT

ROMULUS MUSUNGA-----2nd RESPONDENT

SUKA SECURITY CO. LTD & COURT BROKERS-----3rd RESPONDENT

ELDANG AUCTIONERS-----4th RESPONDENT

DANIEL A. LILI-----5th RESPONDENT

JUDGMENT

Last Order date: 25.08.2022

Judgement Date: 31.08.2022

M. MNYUKWA, J.

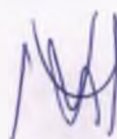
The Appellant Hamisa Mussa is appealing against the decision of the District Land and Housing Tribunal (DLHT) of Mwanza at Mwanza in Misc. Land Application No. 48C of 2017 which the appellant lost. In the records, it goes that, the appellant who is the wife of the 1st respondent filed the application which is subject to this appeal against the 1st respondent, her



husband, and four others objecting to the execution decree in Application no. 48C of 2017 before the DLHT for Mwanza. Briefly the fact ascertained from the record revealed that, the 1st respondent secured a loan from the 2nd respondent and mortgaged a house built on plot No. 399 Block C Nyasaka ward at Kangaye area. The 1st respondent defaulted and the 2nd respondent instituted Application No. 48 of 2017 whereas the DLHT ruled in his favour and the 4th respondent was appointed as a court broker and sold the premises to the 5th respondent. The appellant in this appeal being not a party to the land case No. 48 of 2017, she filed Misc. land Application No. 48C of 2017 objecting to the execution of the decree claiming for the following prayers:

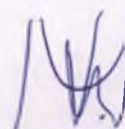
- 1. That the DLHT be pleased to investigate claims set forth by the applicant (objector) against the decree and any other orders of the application No. 48 of 2012 over the suit premises located on plot No. 399 block C Nyasaka Area, Ilemela Municipality and nullify the decree and all orders.*
- 2. Costs of the application.*

After the hearing of the Misc. Land Application No.48C, the DLHT entered judgment in favour of the respondents. It goes that, the DLHT Ruling and the trial tribunal did not find a reason to fault its execution order for failure of the appellant to comply with Order II Rule 58 which



gives the obligation to the objector to prove that, at the date of attachment she had an interest to the property. Despite the claims by the appellant who was the applicant before the DLHT that she did not give consent to 1st respondent to mortgage the matrimonial house, the loan facility bears the appellant's signature and there is spousal consent signed by the appellant. Failure of the appellant to exhibit the DLHT that she never consented and signed; she left the DLHT with no choice rather, to find that the appellant failed to comply with Order XXI Rule 58. Dissatisfied, the appellant appealed before this court with three grounds of appeal that: -

- 1. That the honourable chairperson erred in law and in fact in deciding that the Appellant as a spouse of the 1st respondent did consent to the mortgage agreement between the 1st and 2nd Respondents and in the spousal consent.*
- 2. That the honourable chairperson erred both in law and in fact by ignoring the evidence adduced by the 1st respondent to the effect that the signature on the agreement was not genuine.*
- 3. That the honourable chairperson erred in law and in fact by pronouncing its ruling without waiting for the results from the handwriting expert report from the criminal investigation department in which the tribunal was suo motu.*

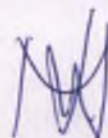


At the hearing, the appellant appeared in person unrepresented while the 2nd, 3rd 4th and 5th respondents afforded the service of Mr. Adam Robert learned counsel and the 1st respondent did not enter an appearance and the matter proceeded ex-parte against him.

The appellant was the first to submit and she prayed this court to adopt her petition of appeal to form part of her submissions. She went on submitting that, she prays this court to order the house to be returned for she was not a party of the mortgage between the 1st and 2nd respondents.

In reply, Mr. Adam Robert opposed the appeal claiming that the appeal is not merited because it challenges the decision of the DLHT in objection proceedings in which the law under Order XXI Rule 62 of the Civil Procedure Code Cap 33 R.E 2019, gives a party a right to institute a fresh case when not satisfied.

He went on to argue the three grounds of appeal jointly that, the claim is over the spousal consent whereas the appellant is claiming that she did not consent for the house to be mortgaged. He went on that, the claims by the appellant that, there were exhibits which if could have been tendered before DLHT the decision could be otherwise. Mr. Adam insisted that, since the same can not be tendered before this court, the appellant is legally mandated to file a fresh case to prove her claims. Insisting he



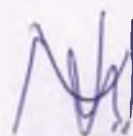
cited the case of **Hamisa Abdu Musa vs Romulus Msunga & 3 Others**, Land Appeal No. 134 of 2015, praying this court to dismiss the appeal for the appellant's claims were not proved before the DLHT.

Re-joining, briefly, the appellant reiterates what she submitted in chief and prays this court to allow the appeal.

After the parties' submissions, it is on record that the appellant before this court attempted to set aside an order for execution before the trial tribunal DLHT where she failed. Mr. Adam Robert, learned counsel for respondents insisted that, the appellant's claim was not proved before the DLHT and therefore this appeal could not serve her purpose for the reasons that the exhibits which she wanted to tender to prove her case were not tendered.

As it stands, an objection proceeding is not subject to appeal and the objector when loses the case, the law gives room to file the claim afresh to have the rights proved and determined. The Civil Procedure Code, Cap 33 RE: 2019, clearly provides for under Order XXI Rule 62 which states: -

"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 Court of Appeal in **Thomas Joseph Kimaro v. Apaisaria Martin Carl Mkumbo And Another** [2002] T.L.R. 369 insisted that the law is settled that, the decisions of the court in objection proceedings in terms of Order XXI of the Civil Procedural Code Cap 33 (RE: 2022) are final and not appealable. However, the Court of Appeal went on to state that, a party aggrieved by the decision, under rule 62 of Order XXI, may lodge a suit in the court of competent jurisdiction. (See the case of **Khalid Hussein Muccadam vs Ngulo Mtiga (As the Legal Representative of the Estate of Abubakar Omar Said Mtiga) & Another**, Civil Application No. 234/17 of 2019, **Bank of Tanzania v. Devram P. Valambhia**, Civil Reference No. 4 of 2003 and **Kezia Violet Mato v. the National Bank of Commerce and Three Others**, Civil Appeal No. 127 of 2005.)

From the above provision, I agree with Mr. Adam Robert learned advocate for the respondents that, in terms of Order XXI Rule 62, the appellant was required to file a fresh suit to exhibit her claims and had no room to appeal against the objection proceedings for the decisions of the DLHT was conclusive.



In the premises, therefore, it is my finding that this appeal was improperly before this court and consequently, it stands dismissed. Based on the circumstance of this case, I give no orders as to costs.

Order Accordingly.



M.MNYUKWA

JUDGE

31/08/2022

Court: Right of appeal explained to the parties.

M.MNYUKWA

JUDGE

31/08/2022

Court: Judgement delivered in the presence of the appellant and in absence of the respondents.

M.MNYUKWA

JUDGE

31/08/2022