

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

**(IN THE DISTRICT REGISTRY AT)**

**MWANZA**

**LAND REFERENCE No. 02 OF 2022**

*(Originating from Execution No. 31 of 2021 originating from Misc. Land  
Application No 78 of 2018)*

**ALPHONCE MAZIKU MASELE**

**(Administrator of the estate of**

**Lucy Madembwe Masele).....APPLICANT**

**VERSUS**

**ACCESS BANK TANZANIA LIMITED .....1<sup>st</sup> RESPONDENT**

**KASSANGA H. KASSANGA**

**T/A ROCK CITY LAKERS LTD.....2<sup>nd</sup> RESPONDENT**

**RULING**

*Date of last Order: 07.09.2022*

*Date of Ruling: 09.09.2022*

**M. MNYUKWA, J.**

This application was filed under the certificate of extreme urgency and made by way of chamber summons under section 38(1) and 95 of the Civil Procedure Code, Cap 33 [RE. 2019] accompanied by an affidavit of ANDREW INNOCENT JOHN LUHIGO, the learned counsel represented

the applicant in the Miscellaneous Land Application No 78 of 2018 and Execution No. 31 of 2021. The applicant prayed before this court to quash and set aside the Order issued by the Deputy Registrar in Execution No. 31 of 2021 on the following grounds;

- 1. The execution proceedings were invalid for absence of extract order or decree AND IN ALTERNATIVE the order executed was wrongly procured as it precedes the Deed of Settlement that is extracted from.*
- 2. The execution proceedings were invalid, improper, incorrect, illegal for having been conducted against a non-party to the original suit/application.*

The 1<sup>st</sup> respondent opposed the application as he filed a counter affidavit sworn in by Noel Mhando, his principal officer. On his part the 2<sup>nd</sup> respondent did not file his reply to the affidavit and he did not enter appearance even though he was properly served, hence the matter proceeded exparte against him.

When the matter was called for hearing on 20<sup>th</sup> July 2022, Mr. Patrick Suluba Kinyerero, a counsel for the 1<sup>st</sup> respondent, prayed leave before this court to raise a point of preliminary objection. By leave of the court, the 1<sup>st</sup> respondent's prayer was granted and he filed the preliminary objection on 28<sup>th</sup> July 2022. The preliminary objection was to the effect



that, *"The application for Reference is improper before this Court and the same is unmaintainable."*

The brief facts as obtained from the applicant's affidavit leading to this application goes that; Lucy Madembwe Masele filed the Miscellaneous Land Application No. 78 of 2018 to restore her suit which is Land Case No. 21 of 2017 which was dismissed for non-appearance. It was deponed that, the Miscellaneous Land Application was never heard as the parties, Lucy Madembwe Masele and Access Bank (T) Limited, filed to the court a Deed of Settlement purporting to be settling a suit which is Land Case No 21. of 2017 which was not before the court as there was no restoration order.

It was further deponed that, on 18<sup>th</sup> November 2021, the 1<sup>st</sup> respondent lodged to the Court an Execution Application No. 31 of 2021 against the applicant who was not a party to either Miscellaneous Land Application No. 78 of 2018 or Land Case No. 21 of 2017. The honourable Registrar upon hearing Execution Application No. 31 of 2021 granted the application and appointed the 2<sup>nd</sup> respondent to attach and sale properties on Plot No. 3 Block A Buhongwa Area, Plot No 84 and 86 Block H Luchebelele and that this court is about to issue a warrant of attachment of immovable properties mentioned above.



As a matter of practice, once a preliminary objection is filed, the court is enjoined to dispose it first before hearing of the main application. Thus, since the 1<sup>st</sup> respondent raised a point of preliminary objection, this court scheduled the hearing on the preliminary objection to be done on 7<sup>th</sup> September, 2022.

During the hearing, the applicant was represented by the learned counsel, Mr. Linus Munishi while the 1<sup>st</sup> respondent was represented by the learned counsel Mr. Juvenelis Motete who hold brief with the instructions to proceed of Mr. Patrick Suluba Kinyerero, learned counsel.

Before the counsel for the 1<sup>st</sup> respondent submitted to the application on merit, the applicant's counsel quickly conceded to the preliminary objection raised as he submitted that the Land Reference No. 2 of 2022 is improper before this court as the same is not supposed to be filed in this court. He therefore, prays the matter to be marked withdrawn in order to file it in a proper forum and prayed each party to bear his own costs.

On his part, Mr. Motete who was given instructions to proceed by praying to the court to grant leave for the hearing to be conducted by way of written submission, did not object to the applicant's concession but initially he prayed the costs to be borne by the applicant. However, later on he agreed that each party to bear his own costs.





From the above narration, it is clear that the parties are all at one that the present application is improper before this court because an Order or decision delivered by the Deputy Registrar cannot be considered as a decision of the lower court for it to be challenged by way of Reference or Review to this court. The only way in which this court can review a decision of Deputy Registrar is by way of Reference as it is provided under Rule 7(1) of the Advocates Remuneration Orders, 2015.

In the persuasive decision of this court in the case of **Sogea Satom Company v Barclays Bank Tanzania and 2 others**, Miscellaneous Civil Reference No. 15 of 2021, HCT at Dar es Salaam, my learned brother, Hon. Judge Mruma, J had pointed out that:

*"... The question that follows is whether a decision rendered by a Deputy Registrar of a High Court can be considered as decision or order of a lower court? The answer to this question is no. Except where the law clearly states otherwise. A decision or order rendered by the Deputy Registrar of the High Court is a decision of the High Court and may be challenged by way of an appeal, reference and/or revision to the Court of Appeal or by way of review to the same High Court."*

Thus, as the applicant conceded to the preliminary objection, the remedy is not to mark it withdrawn as prayed by the applicant because the present application is incompetent before the court and therefore

deserved to be struck out. As the applicant conceded to the preliminary objection raised in its entirety, I order each party to bear his own costs.

Order accordingly.



  
**M. MNYUKWA**  
**JUDGE**  
**09/09/2022**

**Court:** Ruling delivered on 09<sup>th</sup> day of September, 2022 in the presence of the applicant and in the absence of the respondents.

  
**M. MNYUKWA**  
**JUDGE**  
**09/09/2022**