

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TABORA DISTRICT REGISTRY)

AT TABORA

MISCELLANEOUS CIVIL APPLICATION NO. 17 OF 2022

*(Originating from Misc. Land Execution No. 8/2022 and Consolidated
Misc. Land Application No. 18 and 19 of 2022)*

HASHIM RUNGWE-----APPLICANT

VERSUS

MRS ZUBEDA AHMED LAKHA ----- 1ST RESPONDENT

HAJIBHAI KARA IBRAHIM ----- 2ND RESPONDENT

THE MINISTER FOR LANDS, NATURAL RESOURCES

AND TOURISM, (Now THE MINISTER OF LANDS HOUSING

AND HUMAN SETTLEMENT ----- 3RD RESPONDENT

THE ATTORNEY GENERAL ----- 4TH RESPONDENT

ALBERT SITTA T/A MEMO AUCTION MART ----- 5TH RESPONDENT

RULING

Date: 15/02/2023 & 15/03/2023

BAHATI SALEMA, J:

The applicant herein **Hashim Rungwe** and one another who is not a party to this application filed an Objection Proceedings before this Court to challenge the validity and legality of the proceedings and orders made in execution Case No. 8 of 2022. On 16/09/2022 this Court issued a ruling which dismissed Consolidated Miscellaneous Applications No. 18 & 19 of 2022.

Being dissatisfied with the said decision, on 12/10/2022 the applicant filed this application under section 78(1)(b) and Order XLII Rules 1 (1) (b) of the Civil Procedure Code, Cap. 33[R.E 2019] seeking review of the decision of this Court on the following grounds.

1. *That the honourable Court be pleased to review its ruling and orders dated 16th day of September 2022 in Consolidated Miscellaneous Land Application Number 18 & 19 of 2022 (by Bahati Salema, Judge) after the discovery of new and important evidence which after due diligence could not be produced by the applicant at the time when the ruling and orders in Consolidated Miscellaneous Land Application Number 18 & 19 was made.*
2. *The ruling and Orders dismissing the applicant's application for objection proceedings on the ground of the difference of names in the official search submitted to the Court by the applicant which referred the owner of the disputed Plot No. 153/B Lumumba Road at Kigoma Ujiji Municipality as HASSAN RUNGWE instead of his correct name of HASHIM RUNGWE that was entered into by the Honourable Court unaware of the fact that the error on names was done by Kigoma Ujiji Municipality Land Authority.*
3. *That, this Court made its decision without appraising itself of the records submitted by the applicant proving the transfer from the second occupier to the third occupier HASHIM RUNGWE.*

The review was set to be argued orally. During the hearing of the review, the applicant enjoyed the services of Mr. Edward Molele, learned counsel whereas the 1st and 5th respondents were represented by Mr. Akram Magoti, learned counsel; the 2nd respondent was represented by Mr. Victor Kikwasi, learned counsel and the 3rd and 4th respondents were represented by Mr. Lameck Merumba, learned Senior State Attorney.

The 2nd, 3rd, and 4th respondents supported the application whereas 1st and 5th respondents protested the application.

Submitting in support of the application the applicant submitted that they went back to Kigoma Ujiji Municipal Authority to rectify the anomalies that appeared in the official search report with respect to Plot No. 153/B. It was the applicant's submission that the new report which has the correct name of HASHIM RUNGWE (the applicant) could not be obtained during the pendency of Consolidated Misc. Application No. 18 and 19 of 2022. He now prays this court to consider the same and reverse the decision made on 16/09/2022 with costs.

In response, the counsel for 1st and 5th respondents stated that the grounds do not state new evidence that was discovered or there was an error in the face of the record so that the application could be admitted. The respondent contended further that in his view it is like the applicant wants this court to sit as an appellate court against its own decision, he stated further that since the applicant's application

was dismissed, he could have filed a fresh case not an application for review. He prayed the court to dismiss the application with cost.

In a short rejoinder, the applicant reiterated that the new evidence that was discovered after conducting an official search holds weight and he believes that this Court is the right forum to adjudicate the matter.

Having carefully considered the submissions of the parties the main question for determination is whether the application has merit. In the ruling of this Court on Consolidated Misc. Land Applications No. 18 & 19 of 2022 delivered on 16/09/2022 the applicant's application was dismissed for one main reason, the official report obtained from Kigoma Ujiji Municipal Authority showed that Plot No. 153/B is owned by a different person named Hassan Rungwe while applicant's name is Hashim Rungwe. Now he has come with a fresh report which states he is the owner of Plot No. 153/B praying the court to review.

The Civil Procedure Code, Cap. 33 [R.E 2019] at Order 21 Rule 62 makes it clear that the decision of the court in objection proceeding applications is conclusive, it 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."

Guided by the above-quoted provision of the law the question that emerge is whether a party whose objection proceedings was dismissed may come back to this court for review.

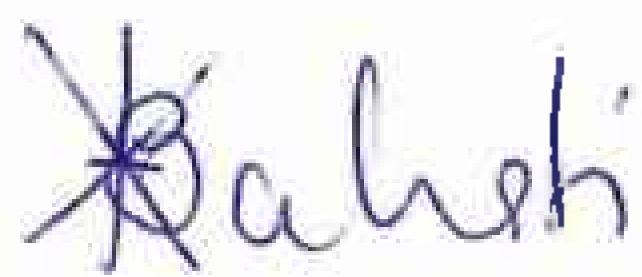
Therefore, it can be concluded that the law under Order 21 Rule 62 provides that once an objection is dismissed, the decision of the court is conclusive, subject to the right of the party against whom the order is made to institute a suit to establish their right to the property. The only remedy available is to file a new suit. In the case of **Mohamed Enterprises (T) Ltd vs Tanzania Investment Bank Ltd & 2 Others Civil Revision No. 2 of 2011**) the Court of Appeal drew inspiration from the Indian case *Phoman Singh vs A. J. Wells AIR 1923 Rangoon 195* and *Maug BA Ha vs S.M.R.M. Firm A.I.R 1934 Rangoon 230* where the High Court of India came across similar situation based on an order made under Order 21 Rule 21 of the India Code of Civil Procedure which is equivalent to Order 21 Rule 62 of the Civil Procedure Code, Cap 33. The Court stated;

"In my opinion where the order in question has after proper investigation, been properly passed under Order 21, Rules 59 -63 (the equivalent order 21 rule 57-62 in Tanzania) Civil Procedure Code, this Court should not, even though the order be erroneous, interfere on revision since there is a remedy by suit."

In the Consolidated Misc. Land Application No. 18 & 19 of 2022 this Court was moved to investigate Execution Case No. 8 of 2022 and the

same was dismissed; now it is the applicant's standing that this court should reverse its decision upon receipt of the new evidence obtained from Kigoma Ujiji Municipal Authority.

Guided by the quotation in the Indian cases above, this Court is barred by Order 21 Rule 62 from entertaining review, revisions or appeals against objection proceeding decisions even if the matter was erroneously decided. The remedy available for the applicant is to file a fresh suit. Consequently, this application is dismissed with costs. Order accordingly.



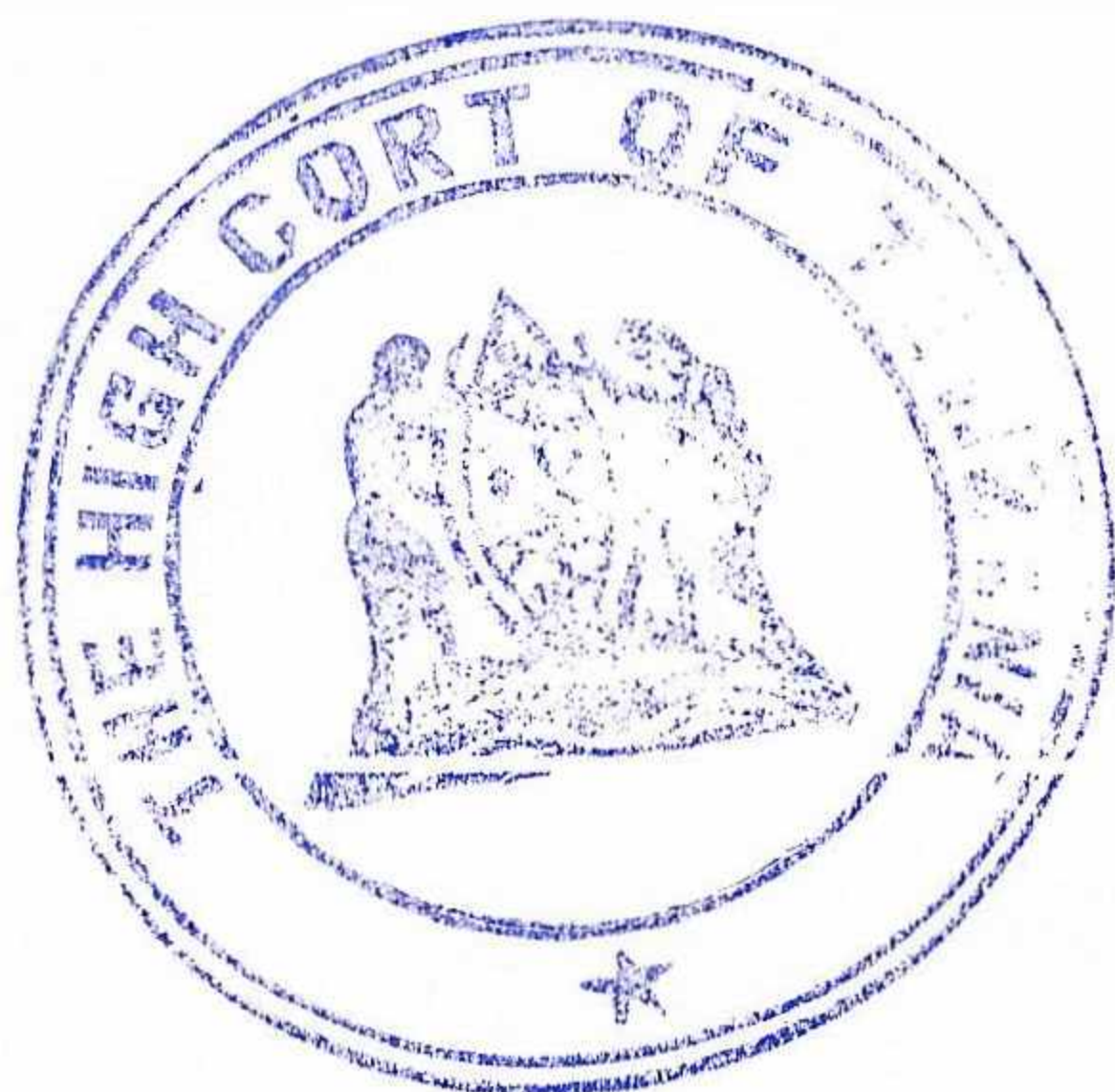
A. BAHATI SALEMA
JUDGE
15/03/2022

Court: Ruling delivered in presence of both parties.



A. BAHATI SALEMA
JUDGE
15/03/2022

Right of appeal fully explained.



A. BAHATI SALEMA
JUDGE
15/03/2022