

IN THE HIGH COURT OF TANZANIA
(MOROGORO SUB-REGISTRY)
AT MOROGORO

CIVIL APPEAL NO. 11 OF 2023

(Arising from the decision of Civil Appeal No. 15 of 2022, in the District Court of Morogoro of the District Court of Morogoro)

MASANJA MASEGESA APPLICANT

VERSUS

CHRISTINA KIMARO RESPONDENT

RULING

20th June & 31th July, 2023

CHABA, J.

Masanja Masegesa, the appellant herein preferred this appeal originating from the decision of Kihonda Primary Court delivered on 9th June, 2022 with the aim of overturning the judgment and orders of the District Court of Morogoro, at Morogoro dated 8th December, 2022 which set aside the ex-parte judgment of the Primary Court and ordered interparty hearing. The appeal was based on the following grounds: -

- i. That, the decision of the District Court is against the weight of the evidence on record.
- ii. That, the trial Magistrate erred in law and in fact in taking irrelevant issues into consideration.

- iii. That, the Trial Magistrate erred in law and in fact by misleading himself while composing the judgment.

When the respondent was served with the memorandum of appeal, she filed reply to the memorandum of appeal coupled with a notice of preliminary objection on a point of law to the effect that, the present appeal is legally incompetent for having emanated from an interlocutory decision of the First Appellate Court (the District Court of Morogoro, at Morogoro).

When the matter came up for hearing of the preliminary objection on 20/06/2023, the appellant appeared in person and unrepresented, while the respondent engaged the service of Mr. Sigano Antony, the learned advocate. By the consent of the Court, the raised P.O was disposed of by way of written submissions.

According to Court's scheduled orders, the respondent was required to file her written submission in support of the P.O., on/before 23/06/2023, and the appellant had to file his reply thereto on 27/06/2023. Rejoinder (if any) had to be filed by the respondent by 30/06/2023. According to the record, the respondent filed her written submission on 20/06/2023 and the appellant for reasons better known to himself, did not file any reply thereto. I shall therefore proceed to determine the merits of the preliminary objection on the basis of the submission filed by the respondent.

In his submission, Mr. Sigano M. Antony, the learned counsel for the respondent argued that, the appellant's appeal is incompetent before this Court as the same

emanates from an interlocutory decision of the First Appellate Court (the District Court of Morogoro, at Morogoro) which did not determine the suit to its finality but rather it allowed the parties to be heard interparties. According to him, the appeal is therefore in contravention with the provision of section 74 (2) of the Civil Procedure Code [CAP. 33, R. E, 2019], which provides that: -

"Notwithstanding the provisions of sub-section (1), and subject to sub-section (3), no appeal shall lie against or be made in respect of any preliminary or interlocutory decision or order of the District Court, Resident Magistrate's Court or any other tribunal, unless such decision or order has effect of finally determining the suit."

Mr. Antony went on submitting that, the present appeal does not meet the test to be finally determined as it was explicated in the case of **Celestine Samora Manase and Twelve Others vs. Tanzania Social Action Fund and Attorney General**, Civil Appeal No. 318 of 2019, where it was held that: -

".....it is therefore apparent that, in order to know whether the order is interlocutory or not, one has to apply "the nature of the order test". That is, to ask oneself whether the [decision] or order complained of finally disposes of the rights of the parties. If the answer is in affirmative, then it must be treated as a final order. However, if it does not, it is then an interlocutory order".

To end up his submission, Mr. Antony urged this Court to dismiss the appeal with costs as the same intends to deprive the respondent's right to a fair trial, he so stressed.

I have carefully considered the submission advanced by the counsel for the respondent on the point of law. The pertinent issue for consideration and deliberation is whether or not the raised preliminary objection has merit.

In tackling the raised point of preliminary objection, I find it wise to first define what is meant by the term interlocutory order and the answer is not far-fetched. It is found in numerous cases including the case of **University of Dar Es Salaam vs. Silvester Cyprian and 210 Others [1998] TLR 176**, where it was observed that: -

"Interlocutory proceedings are proceedings that do not decide the rights of parties but seek to keep things in status quo pending determination of those rights."

Again, in another case of **Tanzania Posts Corporation vs. Jeremiah Mwandi**, Civil Appeal No. 474 of 2020 (unreported), the Court adopted the definition of the term "interlocutory order" as found in Black's Law Dictionary (8th Edition) in which the same is defined, thus:

"An order that relates to some intermediate matter in the case, any order other than the final."

Besides, Legal Dictionary by S. L. Swan and U.N. Narang, 25th Edition, 2015 as cited in the case of **The Board of Trustees of National Social Security Fund (NSSF) vs. Pauline Matunda**, Labour Revision No. 514 of 2019 (unreported), the Court interpreted the term interlocutory order to mean: -

"Order determining an intermediate issue, made in the course of a pending litigation which does not dispose of the case but abides further court action resolving the entire controversy. They are steps taken towards the final adjudication for assisting the parties at the prosecution of their case in pending proceeding".

From the above definitions, no doubt that the same provide a crucial question which is useful in the determination of the instant matter, that is, does the impugned decision or order finally disposed of the rights of the parties? To answer this question and for the purpose of clarity, I find it worthy to hereunder reproduce the order of the District Court of Morogoro, at Morogoro dated 8th December, 2022. I quote: -

"In the final analysis, the appeal is allowed on merits, decision of Primary Court is set aside and I order interparties hearing."

With due respect to the counsel for the respondent, the above order which granted the respondent's prayer for interparties hearing, in my view, finally

disposed of the rights of the parties. In the circumstance, it therefore goes without saying that, the Civil Appeal No. 15 of 2022 which set aside the ex-parte judgment of the Primary Court of Kihonda in Civil Case No. 9 of 2022, was an independent suit in which its orders had an effect to restore interparties hearing of the same and finalized the appeal before the District Court.

In **Lazaro Simon Magela vs. Mwaloni Filing Station**, Civil Revision Application No. 16 of 2021, TZHC at Mwanza, this Court was faced with a similar scenario and in the course of determining the matter it observed that: -

"I think the Respondent's learned counsel has confused himself to think that the Ruling in Misc. Application No. 111 of 2020, having an effect to revive the Civil Case No. 61 of 2015 make it an interlocutory order. However, as the Application was an independent one and being heard and determined to its finality then we cannot term it as an interlocutory order as it finalized the matter to its finality".

Similarly, the Court of Appeal of Tanzania in the case of **Yusuf Hamisi Mushi & Another vs. Abubakari Khalid Haji & 2 Others (Civil Application 55 of 2020) 2021 TZCA 589 (18 October 2021)**, extracted from tanzlii.go.tz., when it was called to deliberate on the question as to whether the ruling of the High Court (Maghimbi, J.) in Miscellaneous Land Application No. 472 of 2019 which restored Land Case No. 142 of 2016 for hearing on merit is not appealable as it was an interlocutory order, the Court had the following to state: -

".....we are of the settled opinion that the ruling of the High Court, the subject of the notice of appeal, finally determined the rights of the parties as the application for review was granted against the respondents as prayed by the applicants.....Nonetheless, we have no hesitation to state that the said ruling in an application for review finally determined the rights of the parties in so far as they cannot go before the same court to object to that decision. Indeed, as stated by the Court in Murtaza Ally Mangungu (supra) the order or decision of the court which is taken to have finally determined the rights of the parties must be such that it could not bring back the matter to the same court on the same matter."

Guided by the above authorities, it is my holding that, the appellant herein rightly exercised his right to appeal against the judgment and orders of the District Court of Morogoro, at Morogoro in Civil Appeal No. 15 of 2022 which conclusively determined the rights of the parties and granted the prayers sought by the respondent herein.

Consequently, the preliminary objection has no merit and it is hereby dismissed with costs. The instant appeal shall proceed to be determined on its merits. It is so ordered.

DATED at MOROGORO this 31th day of July, 2023.




M. J. CHABA

JUDGE

31/07/2023

Court:

Ruling delivered under my hand and the Seal of the Court in Chamber's this 31st day of July, 2023 in the absence of both the Applicant and the respondent.

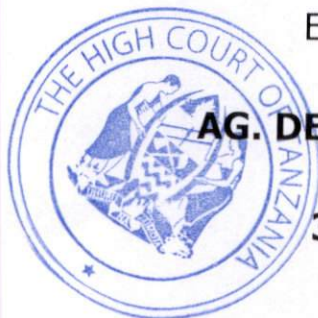
E. A. LUKUMAY

AG. DEPUTY REGISTRAR

31/07/2023

Court:

Right to Appeal to the parties fully explained.



E. A. LUKUMAY

AG. DEPUTY REGISTRAR

31/07/2023