

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LAND APPEAL NO. 55 OF 2023

(Arising from the Ruling in Misc. Land Application No. 70 of 2023 dated 6th Day of April, 2023 of the District Land and Housing Tribunal for Dodoma at Dodoma the decision of Hon. J. F. Kanyerinyeri, Chairman; Originating from the Decision of the District Land and Housing Tribunal for Dodoma at Dodoma in the Land Application No. 212 of 2022 the Decision of Hon. J. F. Kanyerinyeri, Chairman Dated 17th February, 2023)

MALUGU DONALD KUSENHA (Administrator of the Estate of the

Late DONALD MAZENGO KUSENHA)**1st APPELLANT**

MBELEJE DONALD KUSENHA**2nd APPELLANT**

VERSUS

NONGWA DONALD KUSENHA**RESPONDENT**

RULING

2nd October & 30th October, 2023

KHALFAN, J.

The appellants, being aggrieved by the decision of the District Land and Housing Tribunal for Dodoma at Dodoma ("trial tribunal") dated 6th April, 2023 in Misc. Land Application No. 70 of 2023, have lodged their appeal before this court with three grounds of appeal. The appellants are faulting



the act of the trial tribunal to compose ruling without affording them a right to be heard also they contend that the ruling of the trial tribunal was composed in such a way that it was pre-empting the final outcome of the matter and that the trial Chairman disregarded the good grounds furnished by them for his recusal in conduct of the matter.

Before the appeal was determined on its merit, Mr. Justus Magezi, the learned counsel for the respondent, addressed the court on the two points of law for the court to determine; first, the 1st appellant has no capacity to prosecute the appeal and second, the appeal is an abuse of the court process for the reason that the decision of the trial Chairman not to recuse himself from the conduct of the case is not appealable.

Submitting on the first point, Mr. Magezi contended that since the 1st appellant's status as the administrator of the late Donald Mazengo Kusenha was revoked on 13th July 2023 by the District Court of Dodoma, then he lacks the capacity to appear before this court to prosecute the appeal. He cited the provision of Order XXX Rule 1 of the Civil Procedure Code [Cap 33 R.E 2019] to back up his contention.

With regard to the second point, he submitted that the refusal of the trial Chairman to recuse from the conduct of the application is not subjected

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to an appeal or revision. Thus, it is his contention that the appellants had no any remedy other than to proceed with the hearing of the matter till to its finality where they would get an opportunity to appeal to this court. To cement this contention, he referred the case of **Alex Limay Gurt and Another vs. Daniel Marco**, Civil Revision No. 3 of 2023, High Court, Manyara.

Having submitted as above, Mr. Magezi prayed the matter to be remitted to the trial tribunal to proceed with hearing of the application.

Mr. Emmanuel Bwire, the learned counsel for the appellants, in reply on the first point did not object the fact that the 1st appellant's status as the administrator was revoked on 13th July 2023 but he urged the court to consider the fact that this appeal was lodged on 9th May 2023 while the appellant's status as the administrator was still valid and therefore should find that a proper remedy is to stay the proceedings pending the appointment of the successor administrator.

Replying to the second point, Mr. Bwire contended that the decision of the trial Chairman not to recuse himself from the conduct of the case is appealable and can be revised by this court contrary to what has been submitted by his learned colleague. He referred the case **of Issack**



Mwamasika and 2 Others vs. CRDB Bank Limited, Civil Revision No. 6 of 2016, CAT, Dar es Salaam to concretise his submission.

Mr. Magezi rejoined by insisting on what he had submitted earlier and countered the prayer advanced by Mr. Bwire for the matter to be stayed for the fact that the 1st appellant's status of administrator has been revoked while this appeal is pending. He stated that the order for stay of the proceeding cannot be granted where the objection is raised.

He further rejoined by distinguishing the case of **Issack Mwamasika** (supra) with the case at hand, stating that the same was a revision raised by the court *suo motu* and the facts of the case are different as in this matter where the trial Chairman refused to recuse himself unlike in **Mwamasika's case** where the trial Judge recused himself. He thus maintained that the ruling of the trial tribunal is an interlocutory decision hence not capable of being appealed or revised. For that reason, he prayed the court to strike out the appeal with costs.

Having heard from both sides, I find it desirable to start my determination with the second point of law which goes directly to the jurisdiction of this court as it questions if the matter is appealable.

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In perusal of the petition of appeal and its annexures along with parties' submission, it is apparent that the appellants are faulting the decision of the trial Chairman on his refusal to recuse himself from hearing of their application. Now, the question for determination is whether the impugned ruling is not appealable for being an interlocutory decision as alleged by the respondent's advocate.

It is a settled principle of law that an interlocutory decision is not appealable as per section 74(2) of the Civil Procedure Code [Cap 33 R.E 2019]:

*"Notwithstanding the provisions of subsection (1), and subject to subsection (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.**"*

[Emphasis Added]

Therefore, the question to be asked is what does constitute an interlocutory decision. Reading the above recited provision of the law, the



foremost ingredient of interlocutory decision is such decision which does not have effect of finally determining the matter.

Further, the Court of Appeal in several occasions has demonstrated the meaning of interlocutory decision. See the case of **Tanzania Motors Services Ltd and Another vs. Mehar Singh t/a Thaker Singh**, Civil Appeal No. 115 of 2005, CAT, Dodoma; **Yusuf Hamis Mushi and Another vs. Abubakari Khalid Hajj and 2 Others**, Civil Application No. 55 of 2020, CAT, Dar es Salaam; and **Pardeep Singh Hans vs. Merey Ally Saleh and 3 Others**, Civil Application No. 422/01 of 2018, CAT, Dar es Salaam.

For instance, in **Tanzania Motors Services Ltd** (supra) the Court of Appeal stated the following:

*"The fundamental question is whether the issues concerning the appellant's petition were fully canvassed and finally determined by the Court below. We have sought guidance from the case of **Bozson v. Artrincham Urban District Council** (1903) 1KB 547 wherein Lord Alverston stated as follows at page 548 –*

"It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order; but if it does not, it is then, in my opinion, an interlocutory order."



Thus, in the circumstance of the matter at hand, it is my considerate view that the decision of the trial tribunal Chairman not to recuse himself from the case did not by either way determine the right of the parties as well as the same did not determine the case to its finality. Hence, the same falls in the ambit of interlocutory decisions.

The Court of Appeal in the case of **Jitesh Jayantilal Ladwa and Another vs. Dhirajlal Walji Ladwa and 2 Others**, Civil Appeal No. 435 of 2020, CAT, Dar es Salaam was faced with similar issue and held that the refusal of the High Court Judge to recuse himself from the conduct of the case is not appealable by stating that:

*"... the High Court judge having refused to recuse himself from the conduct of the case, proceeded to order on matters related to the proceedings of the suit before him, which showed that the trial was yet to be heard and determined.... **Therefore, without a doubt, the instant appeal is premature since the impugned ruling did not finally and conclusively determine the suit filed by the appellants and still pending at the High Court.**"*

[Emphasis Added]



Similarly, regarding the case at hand, the trial Chairman having decided not to recuse himself from the conduct of the case, the proceedings reveal that he went further to make an order for hearing the preliminary objection. This means, the matter was not finally determined hence the interlocutory decision and the same is not appealable.

Therefore, I find the appeal incompetent for being filed prematurely before this court. In the result, I will not determine the first point of objection because the same will be inconsequential considering that the second point of objection suffices to dispose the matter.

Accordingly, the appeal is hereby struck out, this matter should be remitted to the trial tribunal to proceed with the hearing. In the circumstances, I make no order as to costs.

It is so ordered.

Dated at Dodoma this 30th day of October, 2023.



F. R. Khalfan
F. R. KHALFAN

JUDGE