

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

AT DODOMA

LAND CASE APPEAL NO. 31 OF 2023

*(Appeal from the ruling in Land Application No. 21 of 2022 before District Land and
Housing Tribunal for Singida at Singida)*

ADAM MOHAMED ALLY.....APPELLANT

VERSUS

PENDAELI MPAMILA MADALE.....RESPONDENT

RULING

Date of last Order: 25/10/2023

Date of Ruling: 5/12/2023

KHALFAN, J.

This is the ruling on preliminary objection raised by the above-named respondent to the effect that:

- 1. The memorandum of appeal is bad in law for contravening the requirement of section 74 (2) of the Civil Procedure Code [CAP 33 R.E 2019]*

By parties' consensus, the preliminary objection was disposed of by way of written submissions in which the appellant appeared in person while the respondent was represented by Mr. Godwin Banda learned advocate.



In his submission in support of the preliminary objection, Mr. Banda contended that the appellant raised a preliminary objection before the District Land and Housing Tribunal for Singida (hereinafter referred to as the trial tribunal) to the effect that the respondent had not joined the Municipal Council of Singida as the necessary party to the application hence he sought the application be struck out.

He contended that the trial tribunal overruled the preliminary objection. Hence, this appeal intends to challenge the order of the trial tribunal which overruled the preliminary objection. He contended that the instant appeal is incompetent as it offends the provisions of section 74 (2) of the Civil Procedure Code [CAP 33 R.E 2019] (hereinafter referred to as the CPC), which prohibits appeals from decision on preliminary objection unless such decision has the effect of finally determining the matter.

To buttress his argument, he referred to the decision in the case of **Tunu Mwapachu and 3 others v. National Development Corporation and another** Civil Appeal No. 155 of 2018 (unreported) in which while defining the phrase interlocutory order or decision as used in section 5 (2) (d) of the Appellate Jurisdiction Act [CAP 141 R.E 2019], (hereinafter referred



to as the AJA), which is section *pari materia* with section 74 (2) of the CPC, the court had this to say:

"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 final order, but if it does not, it is then in my opinion, an interlocutory order"

The learned advocate for the respondent urged the court to strike out the appeal and the matter be remitted to the trial tribunal for continuation with hearing.

In reply, the appellant argued that the essence of the instant appeal is to pray before this court to order the joinder of Singida Municipal Council as a necessary party to the Land Application No. 21 of 2022 filed by the respondent herein. He contended that the Singida Municipal Council was a necessary party since its non-rejoinder might lead to non-executable decree by the trial tribunal. He argued that the Municipal Council recognises both parties herein as owners of the land in dispute.



Having gone through the parties' arguments in respect of the preliminary objection raised by the respondent, the sole issue for my determination is whether the preliminary objection raised has merits.

In the instant matter, it is not in dispute that the respondent lodged an application before the trial tribunal against the appellant. The appellant raised a preliminary objection that the application was incompetent for non-joinder of the necessary party namely the Singida Municipal Council. After hearing the parties, the trial tribunal overruled the preliminary objection. The appellant was aggrieved with the decision overruling his preliminary objection; hence, he has preferred the instant appeal.

Rightly as argued by the learned advocate for the respondent, the instant appeal is against a preliminary objection which did not finalise the matter. Hence, it offends the provisions of section 74 (1) of the CPC which reads:

*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]*



It follows therefore that no appeal can be preferred against a decision on preliminary objection or interlocutory order unless such order or decision has the effect of finally determining the matter. The pertinent question to be asked, is at what stage the suit is said to have been finally determined? The phrase "***finally determining the suit***" has been defined to mean a decision or order which has an effect of finally determining the rights and liabilities of the parties.

In the case of **Junaco and Another v. Harel Mallac Tanzania Limited**, Civil Application No. 473/16 of 2016 (unreported) the Court of Appeal defined the phrase as follows:

"An order or decision is final if it finally disposes the rights of the parties."

See also **Jitesh Jayantilal Ladwa and Another v. Dhirajilal Walji Ladwa and 2 Others**, Civil Application No. 154 of 2020 and **Vodacom Tanzania Public Limited Company v. Planetel Communications Limited**, Civil Appeal No. 43 of 2018 (both unreported).

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Therefore, the decision of the trial tribunal did not determine the matter to its finality and no appeal could have been preferred against such decision.

Consequently, I find the preliminary objection to have merits. The appeal before this court is incompetent and the same is accordingly struck out with costs.

It is so ordered.

Dated at Dodoma this 5th day of December 2023.




F. R. KHALFAN
JUDGE