

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 203 OF 2020**

(Originating from Misc Application No.177 of 2019 of District Land and Housing  
Tribunal of Kibaha at Kibaha)

**RAJAB RAJAB MARINGO.....APPELLANT**

**VERSUS**

**ZAINA SAID KIBOGA.....1<sup>st</sup> RESPONDENT**

**LEP AUCTIONEERS CO.....2<sup>nd</sup> RESPONDENT**

**RULING**

*22/11/2021 & 02/12/2021*

**Masoud, J.**

The appellant lost in the objection proceedings commenced by him at the District Land and Housing Tribunal of Kibaha at Kibaha. He was dissatisfied with the decision of the tribunal. He saw it fit to challenge the decision by way of filing the present appeal against the decision.

The appellant had his memorandum of appeal hinged on three grounds of appeal. The first ground was that the district tribunal erred in law and fact for failing to investigate the claim as per the application. The second

ground was that the district tribunal erred in law and fact by relying on weak submission made by the first respondent. And the third ground was that the district tribunal erred in law and fact by failing to adduce strong and sufficient reasons which made the tribunal to decide in the favour of the first respondent.

At the hearing of the appeal rival submissions ensued. They were based on the grounds of the appeal. As to the appellant who was represented by Mr Iddi Msawanga, Advocate, he insisted that the decision was based on mere technicalities as opposed to substantive justice. In reply, the respondent, unrepresented layperson, disputed the submissions in a number of respects. I need not go into the details.

In the course of hearing, the court inquired into whether the present appeal was competent before this court. The appellant's counsel was quick to answer that the court has jurisdiction to entertain the appeal which arose from the objection proceedings. He reasoned that the district tribunal in its ruling dealt with the matter before it in its finality. The appeal was therefore competent before this court.

On his part, the first respondent being unrepresented as he was, he had nothing useful to submit on, other than saying that he won the case in the district tribunal, and that the appeal was not competent before the court.

I was not referred to any law be it statutory or case law in relation to the position maintained by the appellant's counsel and the first respondent. I say so as I am aware of the settled position that where a claim or an objection is preferred, the party against whom an order is made has no right of appeal. He has a right of instituting a suit to establish the right which he claims to the property in dispute as provided for under Order XXI Rule 62 of the Civil Procedure Code Cap 33 R.E 2019.

In respect of the above position there is a number of the Court of Appeal decisionS restating the position. They include **Kezia Violat Mato vs National Bank of Commerce and Others**, Civil Application No. 127 of 2005; and **Katibu Mkuu, Amani Fresh Sports Club v Dodo Ubwa Mamboya and Others**, Civil Appeal No. 88 of 2002; and **Bank of Tanzania v Devram P. Valambhia**, Civil Reference No. 4 of 2002.

As the present appeal arose from the objection proceedings, I am settled that the above position of law applies with the effect of barring the appellant from appealing against the decision. The law is clear in that an aggrieved party may institute a suit. In other words, the only remedy the appellant has is to file a separate suit under Order 21 Rule 62 of Cap 33 RE 2002.

As to the issue whether or not the present appeal is competent before this court, my answer is in the negative. With such consequences, I am prepared to hold as I hereby do so that the appeal is not competent before the court.

In the end, the appeal is hereby struck out with costs. It is so ordered.

Dated and Delivered at Dar es Salaam this 2<sup>nd</sup> day of November 2021.

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**B. S. Masoud**  
**Judge**

