

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

**AT DAR ES SALAAM**

**LAND APPEAL NO.42 OF 2022**

*(Originating from the decision of the District Land and Housing Tribunal  
for Kinondoni at Mwananyamala in Misc. Application No. 509 of 2021  
delivered on 14/02/2022)*

**PRAVEDA RUTAHANGWA ..... APPELLANT**

**VERSUS**

**RICHARD MALIPULA ..... 1<sup>ST</sup> RESPONDENT**

**KABANGO INVESTMENT ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

Date of last Order: 11.04.2022

Date of Judgment: 14.04.2022

**A.Z.MGEYEKWA, J**

The appellant has lodged this appeal against the Ruling of the District Land and Housing of Kinondoni at Mwananyamala in Misc. Application No.509 of 2021 delivered on 14.02.2022. The material background facts to the dispute are not difficult to comprehend. They go thus: the respondents had filed Land application No. 128 of 2009 claiming the appellant encroaching on their piece of land, they were all neighbours who

purchased land from one person one Mustafa M. Songambe, the case ended in favour of the respondents who later applied for execution regarding the demarcations/boundaries among them, whereby tribunal broker Rhino investment was appointed to execute as per the order of the tribunal, Execution was partly not finalized as the appointed broker reported to the District Land and Housing Tribunal to have failed to execute on the issue of boundaries between Richard Malipula and Praxeda Rutehangwa.

On 30<sup>th</sup> March, 2021 the 1<sup>st</sup> respondent complained and ordered that the execution was not finalized to its effectiveness hence appointed **Kabango Auction Mart** Court broker to proceed to execute where Rhino investment had ended. Dissatisfied, the appellant lodged the instant appeal on the following two grounds:-

1. That the District Land and Housing Tribunal erred in law and facts to entertain the matter which was already determined and executed.
2. That the decision of the District Land and Housing Tribunal is *functus officio*.

When the matter was called for hearing on 11<sup>th</sup> April, 2022 the appellant enjoyed the legal service of Mr. Mayunge Amandus, learned Advocate

whereas the 1<sup>st</sup> respondent enlisted the legal service of Mr. Erick Kamala learned Advocate.

Mr. Erick, was the first one to kick the ball rolling. He opted to consolidate the two grounds of appeal because they are intertwined. The learned counsel for the appellant submitted that the Case No. 128 of 2009 was delivered on 27<sup>th</sup> May, 2010, and Rhino Investment execute the same in 2018. Following the said execution, it was his view that the trial tribunal erred in law in entertaining Case No. 128 of 2009, hence the tribunal was *functus officio* and had no jurisdiction to issue such an order.

Accentuating on that, Mr. Erick cited the case of **Patricia Semeto v Uongozi wa CCM Muungano**, Misc. Land Appeal No. 119 of 2021 HC - Land Division at Dar es Salaam and the case of **Abdallah Hemed HakiyaMungu vs Selemani Marando**, Civil Appeal No.12 of 2004 HC at Dar es salaam (both unreported). The learned counsel for the appellant further submitted that in case this court will not decide on this matter the respondent will proceed to execute the tribunal order.

On the strength of the above submission, the learned counsel beckoned upon this court to quash and set aside the tribunal order and allow the appeal.

In reply, Mr. Mayunge Amandus, was brief and straight to the point. He contended that the trial tribunal was not *functus officio* because the 1<sup>st</sup> execution by Rhino was not accomplished to its finality, hence Kabango Company conducted a second execution. It was his submission that Kabango was not executing a new execution order but proceeded from where Rhino Company ended after noticing that the 1<sup>st</sup> execution was partly left unexecuted.

Mr. Amandus went on to submit that any decision arising from an objection proceeding is conclusive and not appealable and that the remedy available for the aggrieved party is to file a fresh suit. To support his contention he cited the case of **Thomas Joseph Kimaro v Albert Insailia Martin Mkumbo & Oscar Mushi**, [2002] TLR 369.

Stressing on the point, the learned counsel for the respondent valiantly submitted that the appeal before this court is incompetent because the same arises from the objection proceedings which is not appealable.

On the strength of the above submission, the learned counsel for the respondent urged this court to dismiss the appeal with costs.

In his rejoinder, Mr. Erick reiterated his submission in chief and added that the tribunal did not visit *locus in quo* to determine the boundaries.

Stressing on the point. Mr. Erick contended that there were two different executions over the same property with different effects.

After a thorough scrutiny of the submissions of both sides, it would appear to me as far as the ground of appeal is concerned to determine whether this appeal is competent before me?

There is no dispute that Application No. 509 of 2021 in regard to objection proceedings what is disputed is whether the District Land and Housing Tribunal was *functus officio* or the matter was already been executed. Being directed by the provision of Order XXI Rule 62 of the Civil Procedure Code, Cap. 33 [R.E. 2019] which provides: -

*"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."*

Equally, the Court of Appeal of Tanzania in the case of **Kezia Violate Mato vs National Bank of Commerce & 3 Others**, Civil Application No. 127 of 2005, among other things observed that: -

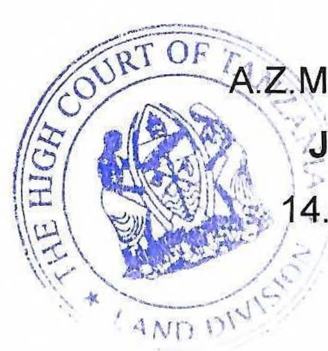
*"...where a claim or an objection is preferred, the party against whom an order is made has no right of appeal but may institute a suit to establish the right which he claims to the property in dispute, as provided for under Order XXI Rule 62 of the Civil Procedure Code. This position was also reiterated by the Court in the case of the **Bank of Tanzania v. Devram P. Valambhia** – Civil Reference No. 4 of 2003 (unreported)."*

Applying the above provision of law authority, impliedly means that no one can lodge an appeal against an objection proceeding. For one to go for other remedies must have exhausted the other remedies provided in the law. The law provides for a party against whom an order is made, the remedy is to institute a fresh suit and not appeal. This position has been amplified in a multitude of the Court of Appeal decisions. In **Transport Equipment Ltd. v D.P. Valambhia** (1995) TLR 161. And **Halais Pro-Chemie v. Wella A.G.** (1996) TLR 269.

For aforesaid reasons, I fully subscribe to the position pointed out by the learned counsel for the respondent that an objection proceeding is not appealable.

In the upshot, I proceed to strike out the appeal for being incompetent as there is nothing before this court to be determined. No order as to costs.

Order accordingly.



A.Z.MGEYEKWA  
JUDGE  
14.04.2022

Judgment delivered on 14<sup>th</sup> April, 2022 in the presence of both learned counsels.



A.Z.MGEYEKWA  
JUDGE  
14.04.2022