

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND CASE APPEAL NO.9 OF 2022**

*(Originating from the decision of the District Land and Housing Tribunal  
at Temeke in Misc. Application No. 35 of 2021)*

**OMARY JUMA MAKUMBATO ..... APPELLANT**

**VERSUS**

**ROBERT CORONAKO ..... 1<sup>ST</sup> RESPONDENT**

**TWAHA JONGO..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*Date of Last Order: 14.04.2022*

*Date of Judgment: 20.04.2022*

**A.Z. MGEYEKWA, J**

The appellant was aggrieved by the whole Judgment and decree of the District Land and Housing Tribunal for Temeke at Temeke in Misc. Application No.35 of 2021 which was delivered on 15.12.2021 before Hon. Bigambo, decided to lodge this appeal to this court.

The material background facts to the dispute are not difficult to comprehend. They go thus: the saga of this case emanated from Charambe Ward Tribunal, in Application No. TMK/CHR/BAR/MAD/A3-02). It was the 2<sup>nd</sup> respondent who instituted the suit on behalf of her late wife, one Rehema Alawi Makumbato (Deceased and not a party to the suit). The respondent claimed ownership of the suit property against the 1<sup>st</sup> respondent in which he lost the case at the Ward Tribunal for lack of *locus stand* to sue the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent was satisfied by the Ward Tribunal decision hence did not challenge the same.

Thereafter, the 1<sup>st</sup> respondent applied for Execution No. 510 of 2020 at the District Land and Housing Tribunal for Temeke at Temeke. It is the progress of such application elevated the appellant who was not a part of the previous suit to lodge objection proceeding against both the 1<sup>st</sup> and 2<sup>nd</sup> respondents in Application No.35 of 2021 at the District Land and Housing Tribunal for Temeke at Temeke. The application ended in favour of the respondents. Dissatisfied, with the decision of the District Land and Housing Tribunal in Application No.35 of 2021, the appellant filed an appeal before this court.

When I was composing the Judgment, I noted a point of law, therefore *suo motto* I called the parties to address me on the issue of jurisdiction *whether the appeal is properly before this court?*

Mr. Victor, learned counsel submitted that the matter at the District Land and Housing Tribunal was related to objection proceedings and the proper remedy is not to file a fresh suit. The respondent had nothing to say rather he submitted that he is not conversant with the requirement of the law related to the situation at hand.

I am in accord with Mr. Victor, learned counsel for the appellant that where an objection is preferred the party is required to refer to **Order XXI r 62 of the Civil Procedure Code**, Cap 33 [R.E. 2019]. It provides that:-

*"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."*

A careful interpretation of the above provision means that the party against whom an order is made, lodges a suit to establish his right to the suit property, and the result of such suit is conclusive. Therefore, guided by the above provision of law, it is clear that the appellant is prohibited to

challenge the decision in a matter emanated from objection proceeding by way of appeal. However, the only remedy available for the appellant is to institute a fresh suit to establish the right which he claims to the property in dispute.

This position has been amplified in a multitude of the Court of Appeal decisions. In **Kezia Violate Mato vs National Bank of Commerce & 3 Others, Civil Application No. 127 of 2005** where the court of appeal 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)." (Emphasis added)*

In the case of **Bank of Tanzania vs Vallambhia, Civil Appeal, No. 15 of 2002** (unreported) where it was held that:-

*"...it is abundantly clear to me that there is no right of appeal to the court once an objection to the attachment has been adjudicated upon. The remedy open to the **objector is to file a***

*suit to establish the objection to the claim of the property in dispute."*

See also the cases of **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 find this appeal incompetent before me. Therefore, I proceed to dismiss the appeal. Since the point of law was raised *suo mottu* by the court, I make no order for costs.

Order accordingly.



Judgment delivered on 20<sup>th</sup> April, 2022 in the presence of Mr. Victor Kessy, learned counsel for the appellant and the 2<sup>nd</sup> respondent.

