

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND APPEAL NO. 114 OF 2021.

*(Originating from Land Application No. 189 of 2020 of Ilala District Land and
Housing Tribunal)*

SALUM SULEIMAN ALLY APPELLANT

VERSUS

ALLY Y. KANJI RESPONDENT

Date of Last Order: 21/04/2022

Date of Ruling: 03/06/2022

RULING.

I. ARUFANI, J

The respondent, Ally Y. Kanji filed in this court a notice of preliminary objection that, the appeal filed in this court by the appellant, Salum Suleiman Ally is misconceived hence bad in law for contravening the provision of section 74 (2) of the Civil Procedure Code, Cap 33 R.E 2019. While the appellant was represented in the matter by Mr. Abraham Hamza Senguji, learned advocate the respondent was represented by Mr. Dimesh Mawji, learned advocate. By consent of the counsel for the parties the above stated point of preliminary objection was argued by way of written submission.

It is stated in the submission of the respondent which was drawn and filed in this court by Advocate Epaphras Charles that, the appeal filed in this court by the appellant is originating form an interlocutory order

made by Ilala District Land and Housing Tribunal (hereinafter referred as the tribunal) in Land Application No. 189 of 2020. He referred the court to the case of **Israel Solomon Kivuyo V. Wayani Longoyi & Another**, [1989] TLR 140 where the court quoted the meaning of interlocutory proceedings and submitted that, it is a general rule that interlocutory order is not appealable unless it has the effect of finalizing the case or proceedings. He stated that the above stated position of the law is provided so clearly under section 74 (2) of the Civil Procedure Code.

He went on arguing that, the appeal at hand cannot be entertained as the order made by the tribunal was interlocutory and does not affect the main suit which is pending before the tribunal. He referred the court to section 5 (2) (d) of the Appellate Jurisdiction Act, 1979, Cap 141 as amended in 2002 which to my understanding it has already been revised and the current revised edition of the law is that of 2019.

He submitted that, section 74 (2) of the Civil Procedure Code disallows entertainment of appeal made on interlocutory order and referred the court to the case of **Chama cha Walimu Tanzania V. The Attorney General**, Civil Application No. 151 of 2008 where the issue of appeal against an interlocutory order which has no effect of deciding the case to its finality was considered. At the end he prayed the point of

objection he has raised to be sustained and the appeal be dismissed with costs.

In his reply the counsel for the appellant, Mr. Abraham Hamza Senguji stated that, the submission by the counsel for the respondent is meritless and stated the counsel for the respondent is not aware of the law governing conduct of cases in the High Court (Land Division) and District Land and Housing Tribunals. He listed in his submission the Land Disputes Courts Act, Cap 216 and the Courts (Land Disputes Settlements) Act, 2002 which to my understanding it was repealed and replaced by the Land Disputes Courts Act. He stated the mentioned law are the one governing proceedings in land cases.

He argued that, the Courts (Land Disputes Settlements) Act, 2002 provides that, the Civil Procedure Code, 1966 and the Evidence Act, 1967 may apply in the proceedings in respect of land disputes subject to the regulations made under section 56 of the Courts (Land Disputes Settlements) Act, 2002. He referred the court to Regulation 22 of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations which provides for powers of the chairman of the District Land and Housing Tribunals.

He went on arguing that, there is nowhere in the cited regulation stated interlocutory order is not appealable and to the contrary he stated

the cited provision of the law states interlocutory orders which have effect of finality are appealable. He argued further that, the order issued by the Chairman of the tribunal determined the matter to its finality by shutting down and evicting the appellant from the suit premises.

He submitted that, through the said interlocutory order the Chairman appointed Faster Auction Mart to shut down the shop frame and evict the appellant and the appellant is out of business. He argued that the appellant does not know the condition of his properties which some of them are perishable. He submitted that, as the interlocutory order had the effect of finally deciding the case what is left in the tribunal is just a moot court. He stated that, as there is nothing to litigate between the parties, there is no need of waiting for the finality of the case which is stated is still pending before the tribunal as the final decision has been fully executed.

He argued that, as the appellant is aggrieved by the decision of the tribunal, he has a right to appeal to this court under Regulation 24 of the Land Disputes [the District Land and Housing Tribunal] Regulation, 2002 and section 41 of the Land Disputes Courts Act. He stated further that, the court has powers under section 42 of the above cited law to confirm, reverse, amend or vary in any manner the decision or order issued by the

tribunal. At the end he prayed the court to dismiss the preliminary objection with costs for want of merit.

It is stated in the rejoinder of the respondent that, the counsel for the appellant has failed to appreciate the provisions of the law governing the appropriate procedure in respect of filing an appeal to this court. he stated it is true that, disputes pertaining to land matters are governed by the Land Disputes Courts Act, Cap 216 of the laws. He stated it is provided under section 51 of the cited law that, the High Court and District Land and Housing Tribunals shall apply the Civil Procedure Code and the Evidence Act in the exercise of their respective jurisdiction.

He submitted that, it is provided under Regulation 22 of the Land Disputes Courts [The District Land and Housing Tribunal] Regulations that, any interlocutory decision is not appealable. He stated that is in conformity with section 74 (2) of the Civil Procedure Code which states no appeal shall lie against any interlocutory decision of courts or tribunal unless the same has the effect of finally determine the suit. He stated that, the decision subject to the appeal at hand is an interlocutory decision in that the court issued a temporary injunction to last until determination of the main suit which is Application No. 189 of 2020 pending before the tribunal.

The respondent's counsel went on reiterating what he principally argued in his submission in chief and shows the order made by the Chairman of the tribunal was an interlocutory order which had no effect of finally deciding the matter filed in the tribunal as the reliefs sought in the application were not determined in the interlocutory order. He argued that, the order issued by the tribunal is very clear that the suit premises was closed temporarily until final determination of the main application. At the end he prayed the court to dismiss the appeal in its entirety for being untenable under the law.

After considering the submission from both sides and after going through the record of the matter the court has found it is not in dispute that the appeal filed in this court by the appellant is challenging the ruling of the tribunal which ordered the suit premises which was being used by the appellant for business purpose be shut down temporarily until final determination of the main application which is pending before the tribunal. The dispute is whether the point of preliminary objection raised by the respondent that the appeal is bad in law as the impugned order is not appealable is meritorious.

The court has found proper to state at this juncture that, appeal from a lower court or tribunal to a higher court or tribunal is governed by law. The current law governing procedure of appeal from District Land

and Housing Tribunals to the High Court is the Land Disputes Courts Act, Cap 216, R.E 2019 and the Land Disputes Courts (District Land Housing and Housing Tribunal) Regulations, GN No. 174 of 2003. Section 41 (1) of the Land Disputes Courts Act states that: -

"Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court."

Among the proceedings which its decision can be appealed to the High court from the District Land and Housing Tribunal as provided under Regulation 22 (d) of the GN No. 74 of 2003 is the decision made by the tribunal in the course of determining an interlocutory application. However, the court has found Regulation 22 (d) cited hereinabove which was also cited in the submission of the counsel for the appellant states clearly that, a ruling on any interlocutory application which has no effect of deciding the case to its finality shall not be appealable.

The question to ask here is what is an interlocutory application. While dealing with the similar issue in the case of **Israel Solomon Kivuyo** (supra) the court tried to define the term interlocutory application to be as follows: -

*"... , interlocutory applications in an action include all steps taken for the purpose of assisting either party in the prosecution of his case, whether before or after final judgment, or of protecting or otherwise dealing with the subject matter of the action before the rights of the parties are finally determined, or of executing the judgment when obtained. **Such are applications** for time take a step e.g. to deliver a pleading, for recovery, **for interim injunction**, for appointment of a receiver, for obtaining garnishee order etc."*[Emphasis added].

From the wording of the above quoted meaning of the term interlocutory application and specifically the bolded part it is crystal clear that, the order issued by the tribunal to shut down the business premises until final determination of the application pending before the tribunal is an interlocutory order which as stated under the proviso to Regulation 22 (d) of the GN No. 174 of 2003 is not appealable.

The similar restriction to appeal against interlocutory order which has no effect of determining a case to its finality is provided under section 74 (2) of the Civil Procedure Code which as rightly argued by the counsel for the respondent is applicable to this court pursuant to section 51 of the Land Disputes Courts Act. The cited section 74 (2) of the Civil Procedure Code states as follows: -

"... 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."

The court has considered the submission by the counsel for the appellant that, there is no need of waiting for determination of the application pending before the tribunal to its finality because there is nothing to litigate between the parties but find it is not true that the impugned order of the tribunal disposed of the matter to the extent that there is nothing more to be determined in the application. The court has arrived to the above finding after seeing that, the tribunal's Chairman stated clearly at page 2 of the impugned ruling of the tribunal that, the reliefs the appellant is seeking in the application filed in the tribunal is an order of evicting the respondent from the suit premises, payment of rent arrears from January to July, 2020 amounting to Tshs. 4,200,000/= and any other relief the tribunal may deem fit to grant which have not been determined by the tribunal.

That being the reliefs the appellant is seeking in the application pending before the tribunal the court has failed to see how the order issued by the Chairman of the tribunal of shutting or closing the suit premises until when the application will be heard and finally determined disposed of the application to the extent of making what remained before the tribunal is just a moot court as argued by the counsel for the appellant.

The court has been of the view that, as the reliefs sought in the application has not been determined to its finality it cannot be said there is nothing pending before the tribunal awaiting determination of the tribunal. The court has arrived to the above finding after being of the view that, in order to say the order issued by the tribunal disposed of the matter to its finality it must be established the order of the tribunal fully canvassed and finally determined the rights of the parties in the application. The above view of this court is drawing leaf from the wording of Lord Alverston in the case of **Bozson V. Artrincham Urban District Council**, (1903) 1KB 547 where he stated as follows: -

"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".

As the order issued by the tribunal does not determine fully the reliefs the appellant is seeking from the tribunal, the court has found the order issued by the Chairman of the tribunal to shut down or close the suit premises until when the application will finally be determined is an interlocutory order which is not appealable under the law. The position of the law provided under Regulation 22 (d) of GN No. 174 of 2003 and section 74 (2) of the Civil Procedure Code is similar to the position of the

law provided under section 5 (2 (d) of the Appellate Jurisdiction Act, Cap 41 R.E 2019.

When the Court of Appeal was dealing with an appeal made on interlocutory order in the case of **Tanzania Motor Service Limited & Another V. Mehar Sigh t/a Thaker Singht**, Civil Appeal No. 115 of 2005 (unreported) it considered what is provided under section 5 (2) (d) of the Appellate Jurisdiction Act and held that, decision on interlocutory application and preliminary objection are not appealable unless they finally dispose of the matter.

From all what I have stated hereinabove the court has found it is apparent that, the appeal filed in this court by the appellant is premature and incompetent for having arisen from a decision based on an interlocutory order, which did not finally determine the matter. Consequently, the preliminary objection raised by the counsel for the respondent that the appeal is misconceived is hereby upheld and the appeal is accordingly struck out with costs. It is so ordered.



I. Arufani, J

Judge

03/06/2022

Court:

Ruling delivered today 3rd day of June, 2022 in the presence of Mr. Abraham Hamza Senguji, counsel for the appellant and in the presence of Mr. Dimesh Mawji, counsel for the respondent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

I. Arufani, J

Judge

03/06/2022