

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT MOROGORO

LAND APPEAL NO. 47 OF 2020

(Arising from the Application for extension of time, originating from the Ruling of the District Land and Housing Tribunal for Kilombero at Ifakara in Misc. Application No. 344 of 2018)

**ARCHILLEUS GAUDENCE SINGUNDALI (as administrator of
estate of GAUDENCE SINGUNDALI) APPELLANT**

VERSUS

SALIMA AMRI..... 1ST DEFENDANT

JOYCE G. SINGUNDALI & OTHERS.....2ND DEFFENDANT

PROPERTY INTERNATIONAL LTD..... ..3RD RESPONDENT

RULING

Hearing date on: 20/6/2022

Ruling date on: 27/6/2022

The appellant on 25th April, 2022 filled his memorandum of appeal, after being granted fourteen (14) days extension of time on 31st March, 2022. Originally the appellant was aggrieved by the ruling and order of the District Land and Housing Tribunal for Kilombero District, which was delivered on 19th day of November 2019. The ruling of the trial tribunal struck out with costs the application made by the appellant due to incompetence based on citation of wrong provision of law and failure to attach the required decree.

Out of that tribunal's ruling the appellant ventured to this court grounded by four (4) grievances. However, in the cause of pleadings, the first respondent through the legal services of advocate Marwa Masanda instituted notice of preliminary objection clothed with three grounds as follows: -

1. That, the appeal is unattainable for being preferred hopelessly out of 14 days period of time as ordered by his Lordship, Hon. P. Ngwembe, J. in Misc. Land Application No. 302 of 2020 on the 31st day of March;
2. That, the appeal is incompetent for failure to attach copy of the decree and judgement appealed against as per the mandatory requirements of the provisions of **Order XXXIX Rule 1(1) of the Civil Procedure Code, Cap 33 R.E 2019**; and
3. That, the subsequent appeal against a conclusive order for an objection proceeding is incompetent for being prohibited under the explicit provisions of **Order XXI Rule 62 of the Civil Procedure Code, Cap 33 R.E 2019**.

On the hearing date of these grounds of preliminary objection, both parties enjoyed the legal service of learned advocates. Mr. Kambamwene appeared for the appellant, while Mr. Marwa Masanda appeared for the respondent.

Regarding the first limb of preliminary objection, Mr. Marwa briefly submitted that, this court delivered a ruling in Misc. Land application No. 302 of 2020 on 31st March, 2022, whereby fourteen (14) days extension of time was granted. However, the Memorandum of appeal was filed on



24/4/2022, thus a delay of ten (10) days. Making this appeal totally out of time.

Mr Kambamwene reply, by countering it eloquently with authorities that the appeal was filed in court timeously. Argued that from the outset, the appeal was filed in this court electronically on 9/04/2022 and same was admitted on 10/04/2022. Hence within fourteen (14) day as per this court's order in Misc. Land application No. 302 of 2020 delivered on 31st March, 2022. He further submitted that, due to challenges encountered in the court's electronic filing system, the court failed to issue control number and they were advised to file afresh. To authenticate his submission, the court clerk took an affidavit to that effect. Consequently, the appeal was afresh filed in JSDS on 22/4/2022 where filing fees was paid on 25/4/2022.

Insisted that the appeal was filed timely but there was a challenge in the electronic filing system which was out of the appellant's control. Supported his argument by referring this court to the case of **Rashid Ahmed Kilindo Vs. The Attorney General, Misc. Civil Application No. 49 of 2020.**

On the second ground of preliminary objection, learned counsel for the respondent submitted that, the memorandum of appeal is not attached with a copy of judgement and decree contrary to **Order 39 Rule 1 of the Civil Procedure Code.** He argued that, it is mandatory to attach copy of the judgement and decree and referred this court to the case of **Fatuma Salum Hamis Vs. Salum Abdalah Jogaya and 20 Others, Land appeal No. 112 of 2020.**



On the Contrary the appellant contented that this appeal is not originating from a court judgement and decree, rather is an appeal from a court ruling. The Memorandum of appeal is attached with a copy of a ruling and copy of extension of time. Therefore, the objection is misconceived and misplaced same be dismissed.

Arguing on the third ground, the respondent's advocate pointed out that in law a subsequent appeal against a conclusive order for an objection proceeding is incompetent by operation of law. Substantiated his argument by referring to **Order XXI Rule 62 of the Civil Procedure Code, Cap 33 R.E 2019**. Insisted that the appealed judgement was from objection proceedings in Misc. application No. 344 of 2018 before the District Land and Housing Tribunal for Kilombero. The appellant invited the tribunal to investigate the claims, but at the end that application was dismissed. Thus, prohibited by law to be appealed against as per Order 21 rule 62 of CPC. Such decision was final and conclusive, the available remedy is to institute a fresh suit as opposed to appealing. Buttressed his argument by referring this court to the case of **Amor Habib Salum Vs. Hussein Bafagi, Civil application No. 76 of 2010**.

In the contrary, the appellant's advocate responded that there is no appeal on objection proceedings. The court decree once issued is followed by execution which is attachment and sale. Thereafter whoever objects on attachment may apply in court by filling an objection proceeding under rule 57 and 58 of Order 21 of CPC. He further submitted by distinguishing that process with a person who is objecting



the sale. Whoever objects the sale may apply in court under rule 98 and 99 of Order XXI, which is called complain against dispossession.

Moreover, he argued that, in respect to the application before the tribunal it was a complaint against sale, that the house which was sold was not a property of the judgement debtor. Therefore, the tribunal was prayed to investigate under rule 98 and 99. Unfortunate the tribunal dismissed the application on the reason of failure to attach judgement and decree and stated that it was an objection proceeding, hence wrong provision of law. What was before the tribunal was complaint against dispossession. Rule 61 and 62 is related to objection proceedings, but the appellant is not interested to it, rather is complaining against sale.

In rejoinder, the advocate for the respondent submitted that, the first ground is still valid and the appellant ought to apply for extension of time. In regard to the second ground, he submitted that the ruling and drawn order also ought to be attached. In response to the third ground he submitted that Order XXI rule 98 and 99 of the CPC has the effect under Rule 101 of the CPC. He concluded that, the decision of the tribunal is conclusive and is not appealable. Therefore this appeal is misconceived same be dismissed.

Having summarized the rival arguments of learned advocates, I find important to consider first the third ground the two grounds (1st & 2nd grounds) may follow thereafter. The respondent strongly resisted the appeal based on non-appealable trial court's ruling. The appeal is contrary to explicit provisions of Order XXI Rule 62 of CPC. For easy of reference the rule is quoted hereunder:-

62. 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.

The question is whether this appeal is encountered under that rule? Obvious, application No. 344 of 2018 before the District Land and Housing Tribunal for Kilombero was brought under Order XXI rule 98 and 99 of the CPC, which after its determination the tribunal concluded that it was an objection proceeding and proceed to struck it out, such decision is considered to be final and conclusive and an aggrieved party thereto has no chance of appealing, rather may institute a fresh suit as per the case of **Amour Habib Salum (Supra)**.

But the appellant submitted quite strongly that the application before, the tribunal was to investigate the matter under Order XXI rule 98 and 99 of CPC and that it was not objection proceeding, but rather a complaint against the sale. For easy of reference the two rules are quoted hereunder:-

98.-(1) Where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession.




(2) The court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

99. Where the court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment debtor, it shall direct that the applicant be put into possession of the property.

These rules allow any person other than the judgment debtor who is dispossessed of his immovable property by a decreeholder after the said property is already sold in execution of a decree, may make an application to the court. The decision thereof, according to the learned advocate for the appellant is appealable. However, the contents of rule 101 of Order XXI, provide an answer to it. For easy of reference rule 101 of Order XXI is quoted hereunder:-

"101. Any party not being a judgment debtor against whom an order is made under rule 98, rule 99 or rule 100 may institute a suit to establish the right which he claims to the present possession of the property; but subject to the result of such suit (if any), the order shall be conclusive."

It is therefore obvious, even the decision made under the Order XXI rule 98 and 99 of the CPC is final and conclusive. There is no room for appeal. The only available remedy to the aggrieved party, is to institute a fresh suit therein instead of appealing against it. 

In the light of this conclusion, the question is, whether this court should proceed to consider the other two grounds of objection? Obvious,

the answer is simple that, since I have already arrived into a conclusion, that this appeal is misplaced whether the consideration of the remaining two grounds may change that conclusion? I think not, therefore, the third ground of objection is capable of concluding this appeal. Accordingly, this appeal is struck out with costs.

Order accordingly.

Dated at Morogoro this 27 June, 2022



P. J. NGWEMBE

JUDGE

27/6/2022

Court: Ruling delivered at Morogoro in Chambers on this 27th day of June, 2022 in the presence of Advocate Kambamwene for the appellant and Pancras Ligombi Advocate for the respondent.

Right to appeal to the Court of Appeal explained.



P. J. NGWEMBE

JUDGE

27/6/2022