

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND REVISION NO. 57 OF 2021**

*(Arising from the decision of the District Land and Housing Tribunal for Kibaha at Kibaha in Land Application No. 44 of 2020 Hon. Mbuga-Chairperson)*

**YOHANA PANGARAMSI MASAKI ..... 1<sup>ST</sup> APPLICANT**

**LADSLAUD IDDI MSENGI.....2<sup>ND</sup> APPLICANT**

**SALUM ATHUMANI RAJABU.....3<sup>RD</sup> APPLICANT**

**CHRISTINA MINJA.....4<sup>TH</sup> APPLICANT**

**ALL FAHAMU TOZO.....5<sup>TH</sup> APPLICANT**

**RAJABU SAIDI MTONGA.....6<sup>TH</sup> APPLICANT**

**HAMISI JEREMIA NDALU.....7<sup>TH</sup> APPLICANT**

**DISMAS ANTHONY SININZE.....8<sup>TH</sup> APPLICANT**

**FRANCIS BETROMAYO CHIWONDA.....9<sup>TH</sup> APPLICANT**

**HAMISI MALONGO.....10<sup>TH</sup> APPLICANT**

**JOHN NDIMBO.....11<sup>TH</sup> APPLICANT**

**VERANDA TOBIAS KATUNGA.....12<sup>TH</sup> APPLICANT**

**BELITA NDALU.....13<sup>TH</sup> APPLICANT**

**ZETTY ALLY MGENI.....14<sup>TH</sup> APPLICANT**

**CHARLES NDIMBO.....15<sup>TH</sup> APPLICANT**

*Alle.*

**MWANZANI HUSSEIN KIZINGO.....16<sup>TH</sup> APPLICANT**

**HAJI HAMISI HAMZA.....17<sup>TH</sup> APPLICANT**

**VERSUS**

**EMMA MSAKI.....1<sup>ST</sup> RESPONDENT**

**YASINTA MSAKI.....2<sup>ND</sup> RESPONDENT**

**NOLIC CO. LTD & COURT BROKER.....3<sup>RD</sup> RESPONDENT**

**MRISHO RAMADHANI.....4<sup>TH</sup> RESPONDENT**

*Date of last order: 4/8/2022*

*Date of Ruling: 12/8/2022*

**RULING**

**A. MSAFIRI, J.**

This is a ruling on preliminary objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> respondents against the present application. The preliminary objection is to the effect that;

- 1. The application is hopelessly bad; untenable in law and abuse of court process by contravening provisions of Order XXI Rule 62 of the Civil Procedure Code CAP 33 R.E 2019 hence this Court is not vested with jurisdiction to entertain the same.*

*Alle.*

A brief background giving rise to the present application as could be gathered from the record is to the effect that, the 1<sup>st</sup> and 2<sup>nd</sup> respondents instituted a land matter sometimes in 2006 against the 4<sup>th</sup> respondent before Tumbi Ward Tribunal (hereinafter referred as the trial tribunal). The trial tribunal decided in favour of the 1<sup>st</sup> and 2<sup>nd</sup> respondents as they were declared lawful owners of a disputed land measuring about 3 acres each.

The 1<sup>st</sup> and 2<sup>nd</sup> respondents lodged an Application for Execution No. 46 of 2013 before the District Land and Housing Tribunal for Kibaha (the DLHT) to have the decision of the trial Tribunal executed. It is on record that the DLHT granted the application for execution vide its order dated 21<sup>st</sup> February 2020 and appointed the 3<sup>rd</sup> respondent to carry out the execution by evicting the 4<sup>th</sup> respondent and demolish all his structures and hand the disputed land to the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

The applicants herein became aware of the said execution hence they lodged Application for objection No. 44 of 2020 before the DLHT claiming that the land in question subject of execution belonged to them and not the 4<sup>th</sup> respondent, hence the same was not liable for attachment. The applicants' application for objection was preferred under the provisions

*Alle.*

of Section 68 (e), Order XXI Rules 58 and 59 of the Civil Procedure Code [CAP 33 R.E 2019], (hereinafter to be referred as the CPC).

After hearing the objection proceedings lodged by the applicants, the DLHT dismissed it for lack of merits on 19<sup>th</sup> November 2021. The applicants were aggrieved with the said decision hence they preferred the present application for revision asking this Court to call for the records of the DLHT in Application No. 44 of 2020 for the purpose of satisfying itself as to the correctness, legality or propriety of the decision or order made therein.

The 1<sup>st</sup> and 2<sup>nd</sup> respondents therefore resisted this application by lodging their joint counter affidavit as well as the above preliminary objection. On 27<sup>th</sup> June 2022, this court ordered the said preliminary objection to be disposed of by written submissions whereby Mr. Yusuph Mkanyali learned advocate represented the applicants, while the 1<sup>st</sup> and 2<sup>nd</sup> respondents appeared in person, they had no legal representation. The 3<sup>rd</sup> and 4<sup>th</sup> respondents did not enter appearance at all.

The 1<sup>st</sup> and 2<sup>nd</sup> respondents contended that the present application for revision is misconceived in law because the remedy available for the applicants after their objection proceedings had been rejected was to

*Alls.*

institute a fresh suit to establish their claim over the disputed property. This is provided for under Order XXI Rule 62 of the CPC.

To fortify their stance, the 1<sup>st</sup> and 2<sup>nd</sup> respondents have referred to me several decisions, including **Thomas Joseph Kimaro v Apaisaria Carl Mkumbo & another** [2002] TLR 369, **Amour Habib Salum v Hussein Bafagi** Civil Application No. 76 of 2010 (unreported), **Khalid Hussein Muccadam v Ngulo Mtiga & another** Civil Application No. 234 of 2017 (unreported). In the latter decision it was held that;

*For as rightly submitted for the respondent, the objector or claimant has remedy under Order XXI R. 62 of the CPC, to commence a fresh suit to establish his right should the objection proceedings be decided against him.*

The 1<sup>st</sup> and 2<sup>nd</sup> respondents also cited the decision of **Sosthenes Bruno & another v Dianarose Bruno** in which the similar stance was reiterated that the remedy available for a party aggrieved with the decision arising from objection proceedings is to lodge a suit in the court of competent jurisdiction under Order XXI Rule 62 of the CPC. *Alle*.

On reply the applicants submitted that under Section 79 of the CPC this Court has powers of revision on matters which have been decided by the subordinate courts on which no appeal lies. To buttress their point, the applicants have cited the decision of **Transport Equipment Ltd v Devram Valambia** [1995] TLR 161, in which it was held that if a party does not have an automatic right of appeal he can use the revisional jurisdiction as a remedy.

The applicants contended further that the authorities cited by the 1<sup>st</sup> and 2<sup>nd</sup> respondents are distinguishable to the matter at hand because the applicants have not lodged an appeal rather they have preferred revision. Hence the applicants prayed the preliminary objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> respondents be overruled.

The 1<sup>st</sup> and 2<sup>nd</sup> respondents did not file any rejoinder submission.

Having gone through the submissions of the parties rival and in support of the preliminary objection, the issue for my determination is whether the said objection has merits.

From the submissions of the parties and the authorities referred, there is no dispute that no appeal can be preferred against a decision *Atls.*

arising from objection proceedings (see also the decision of the Court of Appeal in **Katibu Mkuu Amani Fresh Sports Club v Dodo Ubwa Mamboya and another** [2004] TLR 234).

The question which I am called to determine is whether revision can be preferred against the decision arising from the objection proceedings.

It is established law that pursuant to Order XXI Rule 57 (1) of the CPC where an objection is preferred and an order determining that objection is subsequently made, in terms of Rule 62 of the same Order, the only remedy available to the party against whom that order is made, is to institute a regular suit to prove his claim. Rule 62 of Order XXI of the CPC 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**. [Emphasis added]"*

It follows therefore that, an order arising from the objection proceedings is conclusive and the same cannot be challenged either by

*Alles*

appeal or revision. The only remedy available to the aggrieved party is to institute a suit to establish his right over the property.

The Court of Appeal in the case of **National Housing Corporation v Peter Kassidi & 4 others** Civil Application No. 294 of 2017 Court of Appeal of Tanzania at Dar es Salaam (unreported) on page 9 of the typed judgment, the Court underscored the above stance thus;

*"Put it in other words after the decision on an objection proceeding has been made by a competent court, there is no **remedy for appeal or revision**."* [Emphasis added].

It is my considered view that where there is an alternative remedy provided by the law, like in the matter at hand where the applicants have alternative remedy to file a fresh suit, they cannot properly move the Court to use its revisional jurisdiction. They must first exhaust all remedies provided by the law before invoking the revisional jurisdiction of the Court. The applicants have not yet exhausted all remedies provided by law hence they cannot invoke the revisional jurisdiction of the Court.

In the event and for the reasons stated I sustain the preliminary objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, the present application is incompetent before the Court and it is hereby struck out with costs.

*Ally*



It is so ordered.



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**A. MSAFIRI,**  
**JUDGE**  
**12/8/2022**