

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

**AT DAR ES SALAAM**

**LAND REVISION NO.45 OF 2022**

(Originating from the Decision of the District Land and Housing Tribunal for Temeke in respect of Misc. Land Application No.92 of 2022 dated 5<sup>th</sup> September, 2022)

**RAMAH BAKARI MAGEUZA..... APPLICANT**

**VERSUS**

**TUMAINI E. MNYONE.....1<sup>ST</sup> RESPONDENT**

**JUCACO AUCTION MART COURT**

**BROKERS & DEBT COLLECTORS.....2<sup>ND</sup> RESPONDENT**

**BAKARI MWAWA MAGEUZA.....3<sup>RD</sup> RESPONDENT**

**RULING**

2<sup>nd</sup> & 29<sup>th</sup> March 2023

**L. HEMED, J.**

This is an application for revision made under section 43(1) and (2) of the Land Disputes Courts Act, [Cap 216 RE 2019] and section 79(1)(c) of the Civil Procedure Code, [Cap 33 RE 2019]. In this application, the applicant seeks to challenge the ruling of the District Land and Housing Tribunal for Temeke (Hon. P.I. Chinyele -Chairperson) dismissing Misc. Application No.92 of 2022 (objection proceedings) on the ground that the decision which the applicant was objecting was a decision in rem that could not be challenged by way of objection proceedings. The prayers in the chamber summons are as follows:

*"(a) That this Honorable Court be pleased exercise its Revisional Jurisdiction to satisfy correctness, legality or propriety of proceeding of The District Land and Housing Tribunal for Temeke at Temeke, by calling all the records of The District Land and Housing Tribunal for Temeke at Temeke in Misc. Land Application No.92 of 2022 between RAMAH BAKARI MAGEUZA versus TUMAINI E. MNYONE, JUCACO AUCTION MART COURT BROKERS & DEBT COLLECTORS and BAKARI MWAWA MAGEUZA which was before Honorable P.I.Chinyele – Chairperson so as to determine the legality of the decision of The District Land and Housing Tribunal for Temeke at Temeke in respect of Misc. Land Application No.92 of 2022 and other proceedings in which Misc. Land Application No.92 of 2022 is emanating from.(sic)*

*(b) That the this Honourable Court be pleased to call records for proceedings of which Misc.Land Application No.92 of 2022 is emanating from so as to satisfy itself on errors which is material to the merit which caused injustice to Applicant herein. (sic)*

*(c) Cost be provided for*

*(d) Any other Order(s) as the Honorable Court deems proper to grant in the circumstances of the Application."*

The application is supported by the affidavit of RAMAH BAKARI MAGEUZA. It was contested by the counter affidavit deponed by one Tumaini E. Mnyone, the 1<sup>st</sup> respondent. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents never filed counter affidavits and hence presumed to concede the application.

The application was argued by way of written submissions. Mr. Benard Seleman Maguha, learned advocate argued the application on behalf of the applicant while Mr. Harry Mwakalasya, learned counsel argued to oppose the application on behalf of the 1<sup>st</sup> respondent.

Arguing in support of the application, Mr. Maguha asserted that the law concerning objection proceeding was specifically enacted to assist persons not party to the decree but who have interests on properties subject to execution to protect their interests. He also stated that, when the court entertains objection proceeding should only consider if the property is owned by the objector and such objector was not a party to the original suit. He cited the decision of the Court of Appeal of Tanzania in **Katibu Mkuu Amani Fresh Sport Club vs Dodo Umbwa Mamboya**, Civil Appeal No. 88 of 2022, (Zanzibar) where it was held that a person who was not part to the proceeding is the one who can qualify to lodge objection proceedings. It was the submissions of the counsel for the applicant that since the applicant was not a party to the original proceedings, it was wrong for the trial chairperson to dismiss the objection proceedings on the ground that she had no jurisdiction to fault the decision of the ward tribunal.

Mr. Maguha submitted further that the refusal of the chairperson of the District Land and Housing Tribunal to release the property, caused injustice

to the Applicant as the matter before Kisarawe Tribunal was concluded without hearing the Applicant nor the 3<sup>rd</sup> respondent. The applicant was of the view that the right to be heard on the part of the applicant was infringed. He cited the decision in **Petro Bira Chato vs Hima Hudu Ubaya**, Misc. Land Appeal No.47 of 2020, High Court of Tanzania (Dodoma District Registry), where it was held that the Ward Tribunal cannot conduct any matter *ex-parte*. The applicant prays for the Court to revise the decision of the DLHT for Temeke and set aside the decision of the Ward Tribunal of Kisarawe.

In reply there to, Mr. Mwakalasya stated that the application for revision is misconceived as has been filed contrary to the provisions of Order XXI Rule 62 of the Civil Procedure Code Cap 33 which rendered the order of the chairperson of the DLHT final and conclusive. He contended that the decision in **Katibu Mkuu Amani Fresh Sports Club** (supra) is irrelevant to the matter at hand because the matter originated from Zanzibar which has different civil procedural law.

It was submitted further that objection proceedings under the Civil Procedure Code, Cap 33 has been well discussed in several cases. He cited the decision of the Court of Appeal in **Sosthenes Bruno and Another vs. Flora Shauri**, Civil Appeal No.249 of 2020 which discussed Order XXI Rule 62,60 and 59 of the Civil Procedure Code, Cap 33, that the decisions of the court under rules 59 and 60 are final and not appealable. A party aggrieved by the decision under rule 62 of Order XXI, may lodge a suit in the court of competent jurisdiction. He finally prayed this Court to strike out the entire application with costs.

In his rejoinder submissions, the applicant reiterated his submissions in chief. He stated further that the DLHT for Temeke failed to exercise its powers vested under the law to investigate the objection raised by the Applicant herein and thereafter release the property or refuse to release the property from execution.

Having gone through the submissions made by the counsel for both parties, my duty is to determine whether the application is meritorious. As aforesaid, the applicant is challenging the decision of the DLHT for Temeke dismissing the objection proceedings in Misc. Application No.92 of 2022 on the ground that it had no jurisdiction to fault the decision of the ward tribunal through objection proceedings.

It should be noted at the outset that the Ward Tribunal for Kisarawe in "*Shauri Na. 25/2016*" declared one **Tumaini Mnyone**, the 1<sup>st</sup> Respondent in this matter, owner of the landed property which was the subject matter of the case. The applicant herein was not a party to the said matter before the ward tribunal. I have perused the records of the DLHT and found that the applicant was aggrieved by the decision of the ward tribunal for Kisarawe. He thus lodged the application for objection proceedings to challenge the said decision of the trial ward tribunal which declared the 1<sup>st</sup> respondent owner of the suit piece of land. The decision of the ward tribunal having declared the 1<sup>st</sup> respondent owner of the suit land, it became a judgment in rem, that is, it upheld the right of the 1<sup>st</sup> respondent over the suit landed property against the whole world. I am aware that the applicant could not challenge the said decision by way of appeal as he was not a party

to the original proceedings. However, the question is whether it was proper to use the objection proceedings in challenging the same.

I will start with the law on objection proceedings in our jurisdiction in addressing whether or not the objection proceedings were the proper way to challenge the decision of the ward tribunal which actually was a judgment in rem. The law is covered under the subject, Investigation of Claims and Objections, with a detailed procedure under Order XXI rules 57 up to 62 of the Civil Procedure Code [Cap 33 RE 2019]. The relevant rules are as follows:

*"57(1) where any claim is preferred to, or any objection is made to the **attachment of any property attached in execution of a decree** on the ground that such property **is not liable to such attachment**, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector and in all other aspects, as if he was a party to the suit:*

*Provided that, no such investigation shall be made where the court considers that the claim or objection was **designedly or unnecessarily delayed....**"(emphasis added)*

I am aware that the rationale for inclusion in the Civil Procedure Code of the above rules in Order XXI, is to provide for procedure on how to carry out investigation of claims and objections which may be presented to the court by third parties adversely affected by attachments arising from decree born out of proceedings to which the objectors were not parties. This position was also amplified by the Court of Appeal of Tanzania in **Katibu**

**Mkuu Amani Fresh Sports Club vs. Dodo Umbwa Mamboya and Another** [2004] T.L.R 326.

The way Order XXI Rule 57(1) couched, there must be an attachment order in execution of a decree to which the objector was not a party. In other words, the objection proceedings should basically be aimed at challenging the attachment order only. The outcome of objection proceedings may be to **release of the property from attachment** or **disallowance of claim to the property attached** as provided for under Order XXI Rules 59 & 60 of the Civil Procedure Code (supra).

From the law governing objection proceedings, that is Order XXI Rules 57 up to 62 of the Civil Procedure Code, application for objection proceedings is a remedy available to a person whose property has been wrongly attached in execution of a decree to which he was not a party thereto. Definitely, it is not the method/mode of challenging a decree or judgment. I am holding so because under Rule 62 to Order XXI of the CPC if the claim to the property attached is disallowed the remedy is to institute a fresh suit and not to prefer an appeal or revision as it is in the case at hand. It provides thus:

*"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**. "(emphasis added)*

Under rule 62 above, the decisions of the court under rules 59 and 60 are final and not appealable. The position was insisted in **Thomas Joseph**

**Kimaro vs. Apaisaria Martin Carl Mkumbo And Another** [2002] T.L.R 369 that the decision of the court in objection proceedings is final and conclusive.

In the final analysis, having examined the records of the two tribunals below I found there was no attachment order that could be challenged by way of objection proceedings. The records unequivocally show that there were execution proceedings of the decree in rem, where the decree holder was to be handed over the landed property of which he was found the owner of the same. The execution of the decree in rem like in this matter, cannot be challenged by way of objection proceedings. It follows therefore that, the chairperson of the DLHT for Temeke was justified to dismiss the application for objection proceedings before her.

Additionally, under Order XXI rule 62 of the Civil Procedure Code, [Cap 33 RE 2019], the decision in objection proceedings is final. The remedy available to the aggrieved party is to institute a fresh suit. Therefore, it was not proper for the applicant to come to this Court the way he knocked the gates of this Court.

From the foregoing, I have no option other than dismissing the application. The entire application is hereby dismissed with costs. It is so ordered.

DATED at DAR ES SALAAM this 29<sup>th</sup> March 2023.





**COURT:** Ruling is delivered today, this 29<sup>th</sup> day of March 2023 in the presence of Mr. Benard Maguha advocate for the applicant and Mr. Harry Mwakalasya advocate for the 1<sup>st</sup> respondent. Right of appeal explained.

