

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 20 OF 2023

*(Arising from the order of the District Land and Housing Tribunal for Kinondoni, in
Miscellaneous Application No. 512)*

AIRTEL TANZANIA PLC APPLICANT

VERSUS

VICTORIA JULIUS MONGI 1ST RESPONDENT

TAMBAZA AUCTION MART & GENERAL

BROKERS LIMITED 2ND RESPONDENT

Date of Last order: 26/07/2023

Date of the Ruling: 10/08/2023

RULING

A. MSAFIRI, J

This is an Application for revision whereas, the applicant AIRTEL TANZANIA PLC is praying for this Court among other things to examine the record of the proceedings in Application No. 512 of 2022 at the District Tribunal for Kinondoni District at Mwananyamala(the Tribunal), for the purposes of satisfying itself as to the correctness, legality and propriety of the Tribunal's Ruling dated 02/05/2023, revise the said proceedings and quash the said Ruling and order of the Tribunal and costs of this Application. *Alb*

The Application was made under Section 43(1) (a), (b) and (2) of the Land Disputes Court Act, Cap 216 [R.E. 2019], and it was supported by the affidavit of Miriam Tenga, Legal Manager of the Applicant.

The disposal of the application took form of written submissions, whereas both parties complied with the schedule order of this Court.

The applicant was represented by Projectus Rwehumbiza, learned Advocate, while the respondent enjoyed the legal services of Evance Ignace John, learned Advocate.

Mr. Rwehumbiza submitted that this Court be pleased to call and examine the records of the objection proceedings in Misc. Land Application No. 512 of 2022 filed by the applicant in the Tribunal before Hon. L. R. Rugarabamu Chairman, which was heard and dismissed with costs on 02/05/2023.

Aggrieved by the decision therein, the applicant filed this revision before this Court, on the ground that the attached Communication Tower property on Plot No. 13 Block A Mikocheni does not belong to the Judgment debtor but to the applicant. Hence, that the same is not subject for the attachment, but that the trial Tribunal did not consider such facts in determining Misc. Land Application No. 512 of 2022. *Alle*

In response, Mr. John contended that the Applicant is the stranger, and was not a party in Land Application No. 241 of 2021 between the 1st respondent and Benson Informatics Limited (who is not a party in the current application) which resulted to Execution No. 1350 of 2021 whereas, the Tribunal ordered the auction of properties including the Communication Tower erected in the 1st respondent's property to realize the accrued rent which stands at USD.52,740.00 plus interest owed to the Judgment debtor (Benson Informatics Limited).

He further stated that the Communication Tower likely to be sold belonged to Benson Informatics Limited and not the applicant and that the applicant could have made due diligence before purchasing the Communication Tower as alleged, in order to satisfy whether the same was completely with no any incumbrances. He averred that the Tribunal's order was fair and just and that this Application lacks merit and that it be dismissed forthwith with costs.

In rejoinder, the advocate for the applicant reiterated what was submitted in chief, and further added that the said Communication Tower cannot be part of execution since it does not belong to the judgment debtor on the basis of their agreement.

Acille

Having gone through the rival submissions of the parties, and in the composition of this Ruling, I encountered a legal point of law on the competency of this Application before this Court. In this point I was guided by the provisions of Order XXI Rule 62 of the Civil Procedure Code, Cap 33 [R.E. 2019] which 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).*

The interpretation of the above provisions is that, where the applicant has instituted objection proceedings before the Court of competent jurisdiction, any decision reached out is conclusive, with no room for appeal or revision. The only remedy the party has is to institute a fresh suit to pursue his rights.

This was elaborated clearly in the case of **Amour Habib vs. Hussein Bafagi**, Civil Application No. 76 of 2010 where the Court of Appeal ruled out that: -

'Having given due consideration to the matter before us and being mindful of the provision of order XXI rule 62 of the Civil Procedure Code... the learned High Court Judge acted without jurisdiction when he entertained the appeal which was against the decision

Atto.

given pursuant to the determination of the objection proceeding. The law is quite clear. An order which is given in determination of objection proceedings is conclusive. A party who is aggrieved thereby and intends to pursue the matter further has no right to appeal. The course that is open to him or her is to file the suit to establish the right he/she claims to the property. (emphasis added).

The above case has been referred in good number of High Court decisions including the cases of Pastory **Paulo Jaja vs Bahame Petro & Another**, Misc. Civil Appeal No. 23 of 2020, and **Onesmo Samwel Kisabo & Another vs James Kitindi**, PC. Civil Appeal No. 23 of 2011,

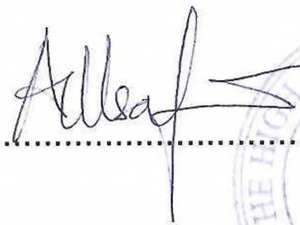
Guided by the above principle set under Order XXI Rule 62 of the CPC and the case laws, I summoned the parties to address me on the competency of the current application which is moving this Court to review the objection proceedings in Misc. Application No. 512 before the Tribunal.

Mr Swedi Ismail, learned advocate appearing on that day for the applicant, readily agreed with the observation of the Court on incompetency of this application. He briefly admitted that the matter was incompetent and prayed to withdraw the application. Mr Evance Ignace, advocate for the respondent had no objection but prayed for the costs. *Alle*

It is trite law that, once a party has conceded to preliminary point of law raised by the party, he cannot withdraw the matter. The party cannot benefit from his wrong doing. The same applies if the Court has raised the point of law *suo motu*. The applicant then cannot benefit by withdrawing the defective application so that he can indirectly correct his mistake. Since the applicant has admitted to the incompetency of the application, then the remedy is not withdrawal, but for the incompetent application to be struck out by this Court.

For the foregoing reasons, this application is struck out. Since the incompetency was raised by the Court *suo motu*, I issue no order as to the costs.

It is so ordered.



A. MSAFIRI

JUDGE

10/08/2023

