

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

**LAND APPEAL NO. 246 OF 2023**

*(Arising from Maombi ya Mapitio No. 54 of 2023 of the District Land and Housing Tribunal for Kinondoni)*

**MARTHA JOHN TEMBA..... APPELLANT**

**VERSUS**

**MWANGA HAKIKA.....1<sup>ST</sup> RESPONDENT**

**ARISTARICK ALPHONCE UISSO.....2<sup>ND</sup> RESPONDENT**

**NGOMENI ENTERPRISES.....3<sup>RD</sup> RESPONDENT**

**R U L I N G**

*Date of Last Order: 27.07.2023*

*Date of Ruling: 17.08.2023*

**T. N. MWENEGOHA, J.**

The 1<sup>st</sup> and 2<sup>nd</sup> respondents above named, raised a preliminary objection against the present appeal for being incompetent. Their reason is that, the same has been preferred against an interlocutory decision. Mr. Cleophas James, learned counsel for the 1<sup>st</sup> and 3<sup>rd</sup> respondents, has argued in his written submissions that, the Ruling forming the basis of this appeal is not appealable. The same has not finalized the suit. Hence under **Section 74(2) of the Civil Procedure Code Cap 33 R. E. 2019**, this appeal is unmaintainable. He also cited the case of **Vodacom Tanzania Public Limited Company versus Planetel Communication Limited,**

**Civil Appeal No. 43 of 2018, Court of Appeal of Tanzania, at Dar es Salaam, (unreported).**

In reply, the appellant who appeared in person, contended that, **Section 74(2) of the Civil Procedure Code Cap 33 R. E. 2019**, provides for a general rule. There is an exception under **Section 74(3) of the same law**, where cases touching mortgage like the present case are appealable. Therefore, the **Vodacom Tanzania Public Limited Company vs. Pranetel Communication Ltd** (supra) is distinguishable.

In rejoinder, the respondent's counsel reiterated his submissions in chief and insisted that, **Section 74(3) of the Civil Procedure Code, Cap 33 R. E. 2019** is not applicable in these circumstances. That, the provision is irrelevant in this case. It deals with issues touching power of sale by the mortgagee or entering possession. That, the instant appeal is against an injunctive order of the District Land and Housing Tribunal, hence not appealable.

Having considered the arguments above, I agree with the 1<sup>st</sup> and 3<sup>rd</sup> respondents' counsel. This appeal is untenable. The records presented before me clearly show that, the impugned decision was given in respect of an Application for Injunction, as preferred by the Appellant. The said Application was dismissed for lacking merits, by Hon. R. Mbilinyi, dated the 30<sup>th</sup> May, 2023. Under **Section 74(2) of the Civil Procedure Code, Cap 33 R. E. 2019**, such orders are not appealable. Let me reproduce the said provision for easy reference as follows:-

*"(2) Notwithstanding the provisions of subsection (1), and subject to subsection (3), 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."*

Now, in her submissions, the Appellant has referred the Court to **Section 74(3) of the Civil Procedure Code, Cap 33 R. E. 2019**. That, the said provision is an exception to the general Rule as provided for under **Section 74(2) of the Civil Procedure Code, Cap 33 R. E. 2019**. For quick reference, I will reproduce the same as here under: -

*"(3) Subsection (2) shall not apply in relation to a decision or order given in relation to the exercise by the mortgagee of the powers to see or enter in possession of the mortgaged land or in an action brought by a mortgage to suspend or to stop sale of a mortgaged property."*

The appellant has insisted that, she is a legal wife of the 2<sup>nd</sup> respondent, who mortgaged their matrimonial home to the 1<sup>st</sup> applicant. She is therefore, not a mortgagor so to speak, she cannot afterwards, be favoured by the above quoted provision of the law. Therefore, the position remains settled that, the present appeal is untenable, owing to the reasons explained above. I refer back to the case, See **Vodacom Tanzania Public Limited Company vs. Planetel Commination Limited (supra)**. Hence, I find the preliminary objection, as raised by the 1<sup>st</sup> and 3<sup>rd</sup> respondents, to have merits and sustain it accordingly.

In the end, this appeal is struck out with costs.

It's so ordered.

  
**T. N. MWENEGOHA**  
**JUDGE**  
**17/08/2023**

