

TANZANIA / JUDGMENT

nelamu shija vs furaha jumanne and another 2021 tzhc 6516 10 september 2021

COURT
TZHCDECIDED
10 September 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY OF SHINYANGA AT SHINYANGA PC. CIVIL APPEAL NO. 22 OF 2020 (Arising from Civil Appeal No. 25 of 2020 of the Kahama District Court originating from Misc. Civil Application No. 01/2020 and Civil Case No. 41 of 2019 of Busangi Primary Court) NELAMU SHIIA APPE LLANT VERSUS FURAHA JUMANNE 1 ST RESPONDENT JUMA LUHEMEJA 2ND RESPONDENT

JUDGMENT

1gh & 1(Jh September. 2021 MKWIZU, J At the District Court of Kahama at kahama, 1st respondent filed an appeal complaining of the decision by the Busangi Primary court confirming attachment and sale of her land in an execution proceeding between Nelamu Shija and Juma Luhemeja in which 1st respondent had objected to its attachment. The District Court allowed the appeal. It found that the suit land being a matrimonial land in which the couple's (respondents in this appeal) residential house is situated is not subject to attachment. The attachment and sale order were quashed and set aside. 1 Nelamu Shija, original decree holder was aggrieved. He filed this appeal with three grounds of appeal. When the matter came for hearing, the court noted the appellant appeal emanates from Misc. Civil Application No. 41 of 2019, an objection proceeding. And having in mind the principle of the law that a decision in an objection proceeding is final and conclusive, I invited the parties to address the court on the competence or otherwise of the appeal both before the District court as well as this court before going into the merit of the grounds of appeal. On 19/8/2021, appellant appearance was through his advocate Mr. Geogrey Tuli and respondents were in person. Having been addressed on the issue raised by the court suomoto, Mr. Tuli was the first to submit. He said, a decision an objection proceeding is final and conclusive, the remedy therefrom is to file a fresh suit to establish the rights over the disputed property. He, in support of his argument cited the case in Pastory Paulo V. Bahame Petro & Another, Misc. Civil Appeal No. 23 of 2020 (H/C unreported). He also in addition stated that, the District Court had no jurisdiction to entertain an appeal originating from an objection proceeding presented to it by the 1st respondent. 1st and 2nd respondent had nothing substantial to say, understandably because they are laypersons and the issue on discussion is a purely legal issue. They argued that, they appealed because they were so instructed by the trial court. 2 I have enquiringly and intensely considered the parties submissions. Apparently, the proceedings under

examination ascends from objection proceedings. As correctly submitted by Mr. Tuli, according to the Civil Procedure Code, Order XXI, Rule 62, a decision in an objection proceeding is final and conclusive. I understand that the law governing execution of the primary courts decisions is silent on this principle. However, my understanding of the principle is that in filing a fresh suit in an appropriate court depending on the nature of the property in dispute, an aggrieved party gets an opportunity to present evidence establishing his/her rights over the property in issue. In *Amour Habib Vs Hussein Bafagi*, Civil Application No 76 /2010 (Unreported), where the court insisted that: ". ... The law is quite dear. An order which is given in determination of objection proceeding 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" Though the appeal in the above case had emanated from the district Court where provisions of the CPC are applicable unlike this case, I find the principle worth applicable even in the primary court. As indicated above, after the decision in *Mise*. Civil application No 41 of 2019, 1st respondent was supposed to file a fresh suit but not to appeal. 3 In the result, I have no option but to declare the proceedings of the District court of Kahama in PC Civil Appeal No 25 of 2020 are declared a nullity and the decision and the subsequent orders are quashed and set aside. Any aggrieved party so wishes may lodge a fresh suit in an appropriate court depending on the nature of the property in issue. This appeal is for that reason incompetent. Since the issue under consideration was raised by the Court suo motu, I make no order as to costs. 4

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Prepared on 13 October 2026 · Esheria