

TANZANIA / JUDGMENT

North Mara

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MUSOMA SUB-REGISTRY AT MUSOMA LAND REVISION NO. 000026706 OF 2024 (Arising from Miscellaneous Application No. 57 of 2024 of the District Land and Housing Tribunal for Tarime) BETWEEN NORTH MARA GOLD MINE LIMITED..... APPLICANT VERSUS AUGUSTINO NESTORY SASI..... RESPONDENT RULING OF THE COURT 12/12/2024 & 10/02/2025 Kafanabo, J.: Before this Court is an application for revision challenging the decision of the District Land and Housing Tribunal for Tarime (hereinafter referred to as the 'Tribunal') in Miscellaneous Application No. 57 of 2024 dated 17th October 2024. The application is made under section 43(1) (a), (b), and (2) of the Land Disputes Courts Act [Cap. 216, R.E. 2019]. The application is supported by an affidavit of Mr. Waziri Mchome, Advocate for the Applicant. In the application for revision, the Applicant prays for the orders that this Court be pleased to revise, quash, and set aside the ruling and order of the Tribunal (Mayeye S.M., Chairman) dated 17th October 2024 in Miscellaneous Application No. 57 of 2024 as there are errors material to the merits of the case involving illegality and injustice as stated in the affidavit supporting the application. The Applicant also prayed for Costs. The Respondent filed a counter affidavit disputing the application. Along with the counter affidavit, the Respondent filed a notice of preliminary objection containing two limbs of points of law to the effect that: /. The instant land revision has been filed in contravention of Order XXI Rule 62 of the Civil Procedure Code, Chapter 33 Revised Edition 2019. ii. Owing to the fact that the instant Land Revision seeks to revise the ruling and order of the District Land and Housing Tribunal emanating from objection proceedings, the same is misconceived for being a wrong remedy to the Applicant. Before considering the determination of the preliminary objections herein above, a brief background of the application before the Court is pertinent. As alluded to herein above, the application arises from Miscellaneous Application No. 57 of 2024 which was an application for execution filed on 29/04/2024 by the Respondent herein against the Applicant for purposes of executing the alleged settlement order of the Kemambo Ward Tribunal in Land Case No. 28 of 2023 dated 16/05/2023. The alleged settlement order was between the Respondent and 'Kampuni ya Barrick'. However, the Respondent sought to attach the bank account of the Applicant. It followed that the Applicant herein, believing that the Respondent sought to attach her account wrongly because she was not a party to the alleged settlement order, preferred objection proceedings against the application for execution, which was assigned the same 2 reference number as the application for execution, that is Miscellaneous Application No. 57 of 2024, which meant that it was part and parcel of the

said application for execution. In the said application (objection proceedings), preferred under Regulation 23(5) of the Land Disputes Courts (District Land and Housing Tribunal Regulations) G.N. No. 174/2003, the Applicant sought the following substantive order: "The sought execution by attaching the objector's bank account No. 015038836800 maintained at CRDB Bank PLC in execution of a decree of the Ward Tribunal for Kemambo dated 16/05/2023 is not tenable because the objector is not a judgment debtor in the said application and the decree to be executed is not attached to the application for executiod'. Given the above application initiating objection proceedings, the parties through their learned counsels addressed the Tribunal on the merits of the objection proceedings, but not the application for execution. The Tribunal delivered its ruling on 17/10/2024 and on pages 6 to 7 of the ruling it pronounced the following orders (which have been translated from the Kiswahili language in respect of which the ruling was written):

- i. Applications No. 35 of2024 and 51 of2024 heard by Hon. Maheieie were nullity because there was an execution order issued by Hon. Maheieie and thus his hands were tied. ii. Also amended application no. 108 of2024 was also a nullity because, after the execution order issued under application 108 of 2024, the /ate Hon. Maheieie was functus officio. 3 Hi. Application for execution (Miscellaneous Application No. 57 of2024) was a nullity because there could not be a fresh application for execution whilst there was an execution order issued by Hon. Maheieie in execution No. 108 of2023. iv. Objection proceedings (Miscellaneous Application No. 57 of2024) is a nullity because it arose from the application for execution (Miscellaneous Application No. 57 of2024) which was also a nullity.
- v. The execution order dated27/09/2023 issued by Hon. Maheieie is valid and because 14 days of implementing the consent decree had lapsed, Tribunal's Broker Josina Company Limited is ordered to attach the judgment debtors or objectors account No. 015038836800 maintained at CRDB Bank PL C and TZS100,000,000,000/= be paid to the decree- holder. Given the above background, this Court now reverts to the submissions of the learned counsels for the parties as regards the preliminary objections. At the hearing of the preliminary objections Messrs Audax Kameja and Waziri Mchome, Advocates represented the Applicant and Mr. Mdimi Thomas Ilanga, Advocate represented the Respondent. Since the preliminary objections were raised by the Respondent, Mr. Ilanga was first to submit in support of the preliminary objections. Mr. Ilanga submitted that since the preliminary objections are interrelated he would argue them together. In support of the preliminary objection, he submitted that the application for revision emanates from execution application No. 57/2024 filed on 29/04/2024 and the Applicant filed objection proceedings on 07/05/2024. The Tribunal heard the application on 4 25/09/2024 and the decision on the same was delivered on 17/10/2024 where the objection proceedings were dismissed. The learned counsel further submitted that Order XXI Rule 62 of the Civil Procedure Code, Cap. 33 R.E 2019 (hereinafter referred to as the CPC) provides that a party against whom the order is made under the objection proceedings shall file a fresh suit. The provision of the law uses the word shall which is imperative. The Applicant herein was supposed to file a fresh suit or let it go. However, the Applicant preferred an application for revision contrary to the dictates of the law. The cases of World Oil (Tanzania) Limited vs Mrs. Zubeda Ahmed Lakha & Others (Civil

Application No. 110/11 of 2023) [2023] TZCA 17724 (5 October 2023), Sweetbert Mathias Kutaga v. Eugenia Rutarora & 3 Others (Application 151 of 2021) [2021] TZHC LandD 6976 (21 March 2021), Barrick North Mara Gold Mine vs Augustino Nestory Sasi (Land Revision 17 of 2023) [2023] TZHC 22384 (6 November 2023), and Ramah Bakari Mageuza v. Tumaini Munyone and Two Others, Land Revision No. 45 of 2022(unreported) were cited to bolster the Respondent's counsel's submission. It was further submitted that the authorities cited above make it clear that the Applicant had to lodge his complaint by way of a fresh suit. It was also argued that under paragraph 2.7 of the Execution Guidelines of the Judiciary 2020, all objections to the attachment of property in the execution of a decree have to be determined by the Court which passed a decree. It was also asserted that objections raised against this application for revision 5 have fallen under the ambit of the case of Mukisa Biscuit Manufacturing Co. Ltd. v. West End Distributors Ltd (1969) EA 696. Responding to the submissions in support of the preliminary objection, Mr. Mchome submitted that before applying revision they were aware of all the authorities cited by the Respondent's counsel. However, the nature of the order of the Tribunal did not bring the decision of the Tribunal under the ambit of Order XXI Rule 62 of the CPC. This is because the application for objection proceedings was not dismissed based on the merits of the application as submitted by the Respondent's counsel, and the possessory rights of the Applicant were not finally determined in the objection proceedings before the Tribunal. It was further submitted that not every order made in the objection proceedings brings the matter under the ambit of Order XXI Rule 62 of the CPC. In the case of World Oil (Tanzania) Limited (supra), on page 18, the Court of Appeal indicated that, if there are illegalities in the objections proceedings, the application for revision may be justified rather than filing a separate suit. Moreover, the case of Alaf Limited vs Said Ndyamukama (12 of 2015) [2022] TZHC 11970 (25 August 2022), was cited to cement the argument that for the objector to opt for a separate suit, the objector's rights must have been determined on merits in the objection proceedings. The case of Sosthenes Bruno and Dianarose Bruno v. Flora Shauri, CAT-Civil Appeal No. 249 of 2020 (unreported) was also cited to cement his submissions. It was further submitted that the decision in objection proceedings should be made after the investigation is conducted and the 6 rights of the objector determined, then Rule 62 of Order XXI of the CPC may become operative. Mr. Mchome further argued that, in this matter, even though the Tribunal recorded the submissions of the parties regarding the objections, the Chairman of the Tribunal did not determine the objection proceedings on merits. The possessory rights of the Applicant on the relevant bank account were not determined on merits which would have necessitated the filing of a fresh suit for an aggrieved party. The decision of the Tribunal on pages 6 to 7 shows that the Chairman did not invoke his powers under objection proceedings. This means that the points of substance raised by the objector that the Applicant was not a judgment debtor in the decision of the Ward Tribunal and that the relevant bank account attached in the execution was not liable to attachment were not determined by the chairman of the Tribunal. However, the chairman involved himself in technical issues and competence of the application before him including setting aside orders of his fellow Chairman which is not allowed under the law. The issue of jurisdiction

was also raised. It was submitted that in the case of *Alaf Limited vs Said Ndyamukama* (supra) on page 11, it was also discussed that in cases where a fresh suit has to be filed, the same has to be filed in the same court where the objection proceedings were filed. In the present matter, the amount involved is TZS 100,000,000,000/= and the jurisdiction of the Tribunal is limited to TZS 200,000,000. Therefore, the Applicant cannot go to the Tribunal to institute a fresh suit in respect of an amount of which the Tribunal has no jurisdiction. 7 It was further argued that, in paragraph 16 of the affidavit supporting the application, the Applicant has explained the illegalities of the Tribunal to support that the application for revision is the appropriate remedy under the law. One of the illegalities is that the Chairman of the Tribunal in a decision subject matter of this revision, set aside the decision of his fellow Chairman the power he did not have. The cases of *Mohamed Enterprises T. Limited vs Masoud Mohamed Nasser* (Civil Application 33 of 2012) [2012] TZCA 219 (27 August 2012) (page 22) and *Sembuli Alli Ndagiwe vs Mwezi Ramadhani* (Land Revision No. 1 of 2021) [2021] TZHC 3976 (5 July 2021), were cited to bolster the submissions. It was further submitted that in the present application, the Applicant is challenging the illegalities of the objection proceedings not the merits of the objection proceedings. The case of *Ms. Sykes Insurance Consultants Ltd vs Ms. Sam Construction Co. Ltd* (Civil Revision 8 of 2010) [2010] TZCA 2 (5 November 2010) is relevant on the matter. The only remedy is to nullify the objection proceedings tainted with illegalities. The Applicant's counsel prayed for the nullification of the objection proceedings and costs be borne by the advocate for the Respondent. In rejoinder submissions, Mr. Ilanga submitted that the objection proceedings were determined on merits. Under Order XXI Rule 57(1) of the CPC the Tribunal conducted an investigation and found that the application was incompetent and thus dismissed the same because there was an order for execution already determined by the Tribunal. It was further submitted that the Applicant should have filed the fresh suit to establish their right on the relevant bank account not the amount involved, and thus the Tribunal 8 has jurisdiction to determine the same. Finally, it was prayed that the costs of the application be borne by the Applicant. After briefly hearing the parties through their respective learned counsels on the preliminary objections raised, this Court is now called upon to determine the merits of the relevant preliminary objections. Climbing to the task, it should be noted that, as alluded to herein above, it was the application for execution lodged by the Respondent in the Tribunal that culminated into the objection proceedings. To bring the matter home, this Court will review the relevant provisions of the law governing the two applications. The application for execution filed at the Tribunal was lodged under regulation 23(1) of the Land Disputes Courts (District Land and Housing Tribunal Regulations) G.N. No. 174/2003 (hereinafter referred to as the 'Regulations') which provides that: decree holder may, as soon as practicable after the pronouncement of judgment or ruling, apply for the execution of the decree or order as the case may be." The Applicant, in the wake of the application for execution against her, preferred the objection proceedings under Regulation 23(5) of the Regulations which provides that: "23(5) The chairman shall, where there are objections from the judgment debtor consider the objection and make such orders as may be appropriate. Provided that hearing of objections under this sub-regulation shall be

limited to the subject matter of the objections." 9 In Miscellaneous Application No. 57 of 2024 (which was an application for execution), the Applicant herein was impleaded as a party (a judgment debtor), and thus under the ambit of regulation 23(5) was entitled, as she did, to prefer objection(s) against the execution. This further enlightens that the Applicant was not a third party to the application for execution because he was joined as the only judgment debtor. However, in the said application geared to object execution, she indicated her ground for challenging the execution being that she was not a judgment debtor in the decree sought to be executed and thus her bank account was not liable to attachment in the said execution proceedings. As clearly indicated in the affidavit supporting the application before this Court and submissions of the parties, the Miscellaneous Application (objection proceedings) made under regulation 23(5) of the Regulations was dismissed by the Tribunal. The remedy for a party who is aggrieved by a decision made under regulation 23(5) of the Regulations is provided for under regulation 24 of the Regulations. The regulation reads that: "Any party who is aggrieved by the decision of the Tribunal shall subject to the provisions of the Act, shall have the right to appeal to the High Court (Land Division): Provided that an appeal shall not in any case be a bar to the execution of a decree or order of the Tribunal." From the above-highlighted provision, it is clear that the remedy available to a party aggrieved with a decision of the Tribunal made in respect of an application preferred under regulation 23(5) of the Regulations is not io filing of fresh suit under Rule 62 of Order XXI of the CPC, but a filing of an appeal under Regulation 24 of the Regulations because the Applicant herein was a party to the execution proceedings and had been impleaded as a judgment debtor. Moreover, the preliminary objection raised is to the effect that the instant land revision has been filed in contravention of Order XXI Rule 62 of the CPC which requires a person aggrieved with an order emanating from the objection proceedings filed under Order XXI Rule 57(1) of the CPC to file a fresh suit. The relevant rule 62 reads: " Where a claim or an objection is preferred, the party against whom an order in 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." It is also settled that the phrase " Where a claim on an objection is preferred..." in the said Rule 62 of the CPC refers to a claim which is lodged under rule 57(1) of Order XXI of the CPC which reads: "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 respects, as if he was a party to the suit. li Provided that, no such investigation shall be made where the court considers that the claim or objection was designedly or unnecessarily delayed." Reading the above rule 57(1) of Order XXI of the CPC presupposes that a party filing the objection proceedings is not a party to the suit or execution proceedings and thus the remedy available to him/her is to file an objection or a claim under the said rule. See the case of Katibu Mkuu, Amani Fresh Sports Club vs. Dodo Ubwa Mamboya and Another, Civil Appeal No.88/2002 (unreported). However, the present application for revision emanates from an application filed under regulation 23(5) of the Regulations which is quite different from the application under rule 57(1) of

Order XXI of the CPC. It is also noted with regret, but respectfully, that even the submissions of both parties did not address the nature of the application (Miscellaneous Application No. 57 of 2024) the subject matter of revision based on the provisions of the law under which it was filed and the context under which the same was preferred. It is a view of this Court that, given the circumstances under which Miscellaneous Application No. 57 of 2024 was made neither the parties nor the Tribunal invoked the provisions of rule 57(1) of Order XXI of the CPC. It also follows that the provisions of Rule 62 of Order XXI of the CPC could not be invoked because it is a consequential provision to an order of the Court that is made under Rule 57(1) of Order XXI of the CPC. This means that if a specific law had provided for a procedure to be followed, in this case, the Regulations, then a general law, in this case, 12 the CPC, was rendered redundant. See the case of the Director of Public Prosecutions vs Kishinadiri Degeshi & Others (Criminal Appeal No. 339 of 2018) [2019] TZCA 359 (31 October 2019). This also means that all the cases which the learned counsels for the parties relied upon in their submissions for and against the preliminary objections are distinguishable from the nature of the present application and thus irrelevant because all of them interpreted Order XXI Rules 57(1) and 62 of the CPC, not regulation 23(5) of the Regulations and its subsequent provisions. It is also a matter of law that the Tribunal could only invoke the provisions of the CPC if the circumstances or nature of the matter before the Tribunal so demanded because of the inadequacy in the Regulations enacted specifically for proceedings before it. Section 51(2) of the Land Disputes Court's Act, Cap. 216 R.E. 2019 provides that: "The District Land and Housing Tribunals shall apply the Regulations made under section 56 and where there is inadequacy in those Regulations it shall apply the Civil Procedure Code." Therefore, as alluded to herein above, the objection to the execution proceedings under Miscellaneous Application No. 57 of 2024 was not preferred under the CPC, but under Regulation 23(5) of the Regulations. It is also clear that there is a prescribed statutory procedure and remedy under the Regulations for a person who is not satisfied with the decision or order of the Tribunal made under the execution proceedings falling under Part V: Execution of Decrees and Orders' of the Regulations which is quite different 13 and independent from the one prescribed under the CPC. As mentioned earlier in this ruling, an appeal under regulation 24 of the Regulations is a remedy laid bare for an aggrieved party. This Court, therefore, finds that the preliminary objections were raised by the Respondent on shaky ground. Having so held, the craving could be to determine whether, yet again, the application for revision is proper before this court in terms of the clear wording of regulation 24 of the Regulations. However, that would not be appropriate for this Court to determine at this hour because the parties have not been heard on the same. In light of the above this Court finds that the preliminary objections raised by the Respondent are misconceived and unmeritorious. The said preliminary objections are therefore dismissed. Under the circumstances of the matter, each party should bear their costs. Dated at 10th Day of February 2025. Judge The in the presence of Messrs Audax Kameja and Waziri Mchome, Advocates for the Applicants, and Mr. Emmanuel Mng'arwe, Advocate for the Respondent. Judge 10/02/2025 14

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