

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**CIVIL APPEAL NO. 24 OF 2020**

*(Arising from ruling of the District Court of Tarime at Tarime  
in Civil Application No. 22 of 2019)*

**KALEBU KUBOJA MJINJA ..... APPELLANT**

***VERSUS***

**SHADRACK DANIEL TEMBE ..... RESPONDENT**

**RULING**

6<sup>th</sup> November, 2020 and 28<sup>th</sup> January, 2021

**KISANYA, J.:**

This appeal originates from the ruling of the District Court of Tarime at Tarime in Civil Application No. 22 of 2019. In that application, Shadrack Daniel Tembe (the respondent) sought to execute the court's judgment and decree that had been issued against the appellant in Civil Case No. 26 of 2015. He therefore prayed for orders for attachment and sale of the appellant's house located at Buhemba, Tarime in order to satisfy the decree. The application was granted and one, Mr. Alex Mgabo T/A Magabo Auction Mart appointed to execute the order.

Dissatisfied, Kalebu Kuboja Mjinja has preferred an appeal before this Court. He faults the District Court for failing to evaluate the evidence on record, attaching the matrimonial property and failing to inform him of the right to appeal against.

When this application came up for hearing, both parties appeared in person. Having considered the background of this matter, I probed the parties to address the Court on the competence of this appeal. To be specific, parties were asked to address whether an execution order is appealable.

The appellant was of the view that an execution order is appealable on the reasons that, right to appeal is enshrined in the Constitution of the United Republic of Tanzania, 1977. The respondent had nothing to submit on this issue. He urged the Court to decide it according to the law. However, both parties proceeded to submit the appeal on merit.

Having heard the parties, I will proceed to determine the competence of this appeal before considering its merit. In determining the competence of this appeal, the issue is whether an execution order or ruling is appealable.

I agree with the appellant that, right to appeal is enshrined in the Constitution. However, it is exercised in accordance with the law and depending on the nature of a case which gave rise to the impugned decision. For instance, that right cannot be exercised if the law provides for alternative remedy other than an appeal.

The orders subject to appeal are listed in section 74 and Order XL of the Civil Procedure Code, Cap. 33, R.E. [Cap. 33, R.E. 2019]. An order arising from the execution proceedings is not listed in the said provisions. It is therefore not appealable. But, that does not mean the execution order cannot be challenged. The remedies available to a person aggrieved by the execution order or proceedings include, applying for revision of the execution proceedings, litigate the questions relating to execution under section 38 of the CPC or make use of Order XLI, Rule 1 of the CPC.

In the instance case, the execution ruling/order for attachment and sale of the appellant's property to satisfy the decree has been challenged by way of appeal. Having considered the provisions of section 74 and Order XL, Rule 1 of the CPC, I am of the considered view that this appeal is incompetent.

In view thereof, this appeal is hereby struck out. Since the issue which has disposed of this matter was raised by the Court, *suo motu*, I make no order as to costs. It is so ordered.

DATED at MUSOMA this 28<sup>th</sup> day of January, 2021.



  
E. S. Kisanya  
JUDGE

Court: Ruling delivered this 28<sup>th</sup> day of January, 2021 in the presence of the respondent and in the absence of the appellant. B/C - M. Kimweri Present.

  
E. S. Kisanya  
JUDGE  
28/01/2021