

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)**

AT DODOMA

LAND APPEAL NO. 94 OF 2019

*(Arising from the decision of the District Land and Housing Tribunal Dodoma in Misc.
Application No. 209 of 2019)*

BERTHA LUMBO APPELLANT

VERSUS

SOSPETER TIMILA 1ST RESPONDENT

MAIKO LUMBO 2ND RESPONDENT

RULING

11th August, 2021 & 11th August, 2021

M.M. SIYANI, J

Sospeter Timila and Maiko Lumbo who are the 1st and 2nd respondents in this appeal, were parties in Misc. Land Application No. 93 of 2015 at the District Land and Housing Tribunal Dodoma where the 2nd respondent lost the suit over a piece of land. Following that decision, the 1st respondent then applied for execution of the decree. On 8th September, 2015 the District Land and Housing Tribunal ordered the 2nd respondent to be evicted from the suit land and subsequently appointed Kondo Auction and Court Brokers to

execute the order. On 8th October, 2018, which is almost three years later, Bertha Lumbo lodged objection proceedings at the trial tribunal contending that the land in dispute was her property. Having heard the parties on merit, the objection proceedings were dismissed.

Dissatisfied, Bertha Lumbo is now in this court by way of an appeal against the dismissal of her objection proceedings. When the matter came for hearing on 11th August 2021, I formed an idea that the appeal might be incompetent because in terms of Order XX1 Rule 62 and 101 of the Civil Procedure Code Cap 33 RE 2019, the remedy available for an objector once objection proceedings has been determined against him or her, is to file a fresh suit to establish her right. As such I decided to invite parties to address the court on the competency of the instant appeal.

Given a chance to address the court, the appellant and the 2nd respondent who appeared in person and unrepresented, had nothing substantial to submit perhaps owing the technicality nature of the issue raised. On the other hand Ms Johanitha Paul, the learned counsel who represents the 1st respondent basically conceded that indeed the appellant being an objector

at the trial tribunal ought not to have appealed against the dismissal of her objection proceedings but she could have filed a fresh suit to establish her rights over the land. As such the learned counsel moved the court to strike out the appeal.

Having revisited the record and consider what was submitted to me as above, I am increasingly of the opinion that the instant appeal is incompetent because, as correctly observed by Ms Johanitha, the appellant being an objector to execution proceedings at the District Land and Housing Tribunal, has no right of appeal against a final decision in such application. The law under Order XXXI Rule 101 of the Civil Procedure Code (supra) gives any person (apart from a judgment debtor) a chance of establishing his/her right over the dispossessed property by instituting a fresh suit. In my considered opinion therefore, an objector being not a party to the origin suit, has no right of appeal but may file a fresh suit in a competent court, if dissatisfied with a decision in respect of objection proceedings.

For the foregoing reason, I find the instant appeal incompetent and consequently the same is hereby struck. Considering the fact that the issue

leading to this conclusion was raised by the court *suo motto*, I order each party to bear its own costs. It is so ordered.

DATED at **DODOMA** this 11th day of August, 2021



M. M. SIYANI
JUDGE