

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MWANZA DISTRICT REGISTRY  
AT MWANZA**

**PC. CIVIL APPEAL No. 23 OF 2021**

*(Arising from Civil Appeal No. 03 of 2021 of Nyamagana District Court, which originated from Civil Case No. 391/2020 of Mwanza Urban Primary Court)*

**ONESMO SAMWEL KISABO ----- 1<sup>ST</sup> APPELLANT**

**ELIAS MASONGA ----- 2<sup>ND</sup> APPELLANT**

**VERSUS**

**JAMES KITINDI ----- RESPONDENT**

**JUDGMENT**

31<sup>st</sup> August & 27<sup>th</sup> September, 2021

**TIGANGA, J**

Before Mwanza Urban Primary Court, the respondent successfully sued one Zakaria Masala Mihulu and Robert Elias Masonga herein after referred to as the judgment debtors, for recovery of civil debt of Tshs. 15,443,900/= being the unpaid price of timbers which the respondent supplied to the said judgment debtors. Initially the said decree holder had entered in a written commercial or business agreement in which he was to supply and actually supplied timber to the judgment debtor on credit, on the promise that they would pay after selling the said timber, the practice

being commonly known as "Mali Kauli". According to the evidence, the judgment debtors were supplied, timber worth Tshs. 31,276,406/=, and under that agreement each judgment debtor pledged as security, the house located at Kanyerere Street in Mwanza. But out of that amount, they paid only Tshs. 15,832,506/= and defaulted to pay Tshs. 15,443,900/= for which Civil Case No. 391 of 2019 was filed.

After full trial of suit before the Primary Court, the trial court was satisfied that the claimant had proved his claim and consequently condemned Zakaria Masala Mihulu to pay the claimant Tshs. 10,715,350/- while Robert Elias Masonga was condemned to pay Tshs. 4,728,550/= out of the unpaid amount, and the remaining Tshs. 1,167,100/= was supposed to be paid by both defendant Judgment debtors in equal shares.

Following that victory, and the fact that no appeal was preferred the decree holder filed application for execution. That was followed by an order for attachment of both houses which were initially pledged as security in the agreement. After that order, the judgment debtors came forward and committed themselves to pay and clear the debts by installment. Robert Elias Masonga committed himself to start paying on 25/04/2020, while

Zakaria Masala Mihulu committed himself to pay by installment with effect from 30/04/2020.

Those commitments were recorded and turned into a court order dated on 19/03/2020, and necessitated, on that base the trial executing court to lift the attachment of the already attached houses. Nevertheless, the judgment debtor, did not therefore honour their promise to pay by instalments consequence of which, the court made an order for the execution to proceed. After such an order, there came two persons one Onesmo Samwel Kisabo, who filed objection proceedings against the attachment of the house of Zakaria Masala Muhulu on the ground that the same is his having purchased the house by way of settling of the debt which the said Zakaria owed to him and that, the said debt settling agreement handed over the house to the said Onesmo Samwel Kisabo on 17/03/2020. That practically was done two days before the said Zakaria Masala had committed himself to pay the debt, on 19/03/2020.

The other objector was Elias Masonga, the father of the said Robert Elias Masonga, he filed objection proceedings against the house attached in execution and settling the debt of Robert Elias Masonga on the ground

that, the house was not the property of Robert Elias Masonga, as since the year 2010 the said Robert Elias Masonga had already handed over as a gift to his father the said Elias Masonga, the second appellant.

In the Ruling of the trial court dated 30/12/2020 the objections were sustained, the attachment order was lifted and the decree holder was advised to search for other properties of the judgment debtors.

The decision aggrieved the decree holder who decided to appeal to the District Court by filling four grounds of appeal as follows;

- i) That the trial court erred by proceeding to hear and determine the objection without summoning and joining the judgment debtors.
- ii) That the trial court erred in law and fact by deciding in reliance of exhibits which are contradictory, unrealistic and not specific.
- iii) That, the trial court erred in law by framing issues which are not helpful and relevant in resolving the case.
- iv) That the trial court erred in law and fact for failure to examine, evaluate and analyse the evidence on record.

He prayed for the appeal to be allowed with costs, the proceedings and judgment of the trial court be quashed and set aside, and the order of attachment and sale of the houses of the judgment debtors be upheld and any other relief as the court could deem fit to grant.

After hearing the parties on appeal which was between James Kitindi Kisema (the Decree holder) vs Onesmo Samwel Kisabo and Elias Masanga, the 1<sup>st</sup> appellate court found the appeal to be meritorious on the ground that the objection proceedings were conducted without involving the judgment debtors against whom the property was attached to satisfy the decree against him.

Secondly that the houses which were the subject of the objection proceedings were pledged by the judgment debtors themselves as security, the same could not be found to be the property of another, without first investigating the claim by the objector and without asking one question, at what time was the said properties changed from the status of being securities. Also that the decision of the 1<sup>st</sup> appellate court based on the contradictory evidence and that the trial court failed to analyse evidence.

However, the 1<sup>st</sup> appellate court in its decision relied on the Civil Procedure Code [Cap 33 R.E 2019] which is inapplicable in the proceedings

originating from Primary Court. That decision aggrieved the appellants in these proceedings; they decided to appeal before this court by filing four grounds of appeal as follows:

- a) That the first appellate court failed in law to entertain an appeal from objection proceedings.
- b) That, the first appellate court did not properly consider and weigh the appellant's evidences advised to support their case on the balance of probabilities as a standard of proof required in civil litigations.
- c) That, the first appellate court erred in law for setting aside the decision of the trial court where as the trial court investigated the appellants claim and committed no illegality, impropriety or misdirection in arriving to its decision. The trial court was at best to see and assess the demeanor and credibility of the witness.
- d) That the trial court did not decide on all issues without assigning reason.

With consent of the parties and leave of this Court, the appeal at hand was argued by way of written submissions, where in the submission

in chief by the 1<sup>st</sup> appellant submitted only on the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal but abandoned the 2<sup>nd</sup> ground of appeal.

In respect of the first ground of appeal the counsel for the 1<sup>st</sup> appellant submitted that, in law, orders arising out of objection proceedings are conclusive and hence not appealable, the proper recourse for the aggrieved party is to institute a suit not to prefer an appeal. Therefore on that base, the first appellate court erred to entertain an appeal because it lacked jurisdiction.

Further to that, he insisted that the court erred in relying on the provision of the Civil Procedure Code [Cap 33 R.E 2019], which is not applicable in proceeding which originates from Primary Court. Therefore the trial court fatally misdirected itself by relying on the provision of the law which is inapplicable to the respective proceedings, hence warranting intervention.

In support of the legal stands that objection proceedings are not appealable, the counsel for the 1<sup>st</sup> appellant relied on a plethora of case authorities most of them of this court, but in this ruling, it suffices to refer few of them as hereunder. For instance in the case of **Dorica Kuyenga vs**

**S & C Ginning** HC Civil Revision No. 08 of 2006, **Wanshara Makori & Another vs Modesta William & 3 others**, Land Appeal No. 58 of 2020, HC Musoma, Kisanya, J, **Ruth Kazungu & 7 other vs Rebeca, Joseph** PC Civil Appeal No. 55 of 2020, HC – Mwanza, Mgeyekwa, J, and **Pastory Paul Jaja vs Bahame Petro & Another**, Misc Civil Appeal No. 23 of 2020, HC Shinyanga, Mkwizu, J. For instance in **Pastory Paul Jaja vs Bahame Petro & Another**, (supra), the court relied on the decision of the Court of Appeal of Tanzania in the case of **Amour Habib vs Hussein Bafagi** Civil Application No. 76 of 2010 (unreported) in which it was held that an order which is given in determination of objection proceedings is conclusive. A party who has been aggrieved by it and intends to pursue the matter has no right to appeal.

Submitting in respect of the first ground of appeal, he submitted that the trial court acting under rule 70 (4) and (5) of the Magistrate Courts (Civil Procedure in Primary Court) Rule G.N 310 of 1964, investigated the appellants claim and came to the conclusion that the attached property was not liable for attachment. He submitted that, the duty of the trial court was limited to investigating the claim and give the decision as held in the case of **Katibu Mkuu Amani Fresh Club vs Dodo Ubwa Mamboya**,

**Khamis Machano Keis**, Civil Appeal No. 88/2002 CAT - where it was held that in dealing with objection proceedings, the court has a duty to investigate the claim raised by the objector.

In cementing on the ground, the counsel submitted that at page 2 and 3 of the typed judgment of the trial Court, it is evident that the court investigated into the matter and was satisfied that when the house was sold to the 1<sup>st</sup> appellant had no any incumbrance. In his view, therefore the first appellate court misdirected itself in its decision which misdirection requires this court's intervention.

The fourth ground raises a complaint that the 1<sup>st</sup> appellate court did not decide on all issues raised without assigning reasons. He submitted that the issues were framed by the 1<sup>st</sup> appellate Magistrate, *suo moto* during the composing of the judgment as appearing at page 5 of the judgment, and did not involve the parties in the proceedings and parties were not heard on them during hearing.

Further to that, he submitted that even the conclusion reached based on inapplicable law that is Civil Procedure Code (*supra*). He submitted that out of five framed issues, only three issues were resolved leaving two

issues, which are issue number 4 and 5 unresolved. In his opinion that is against the principle of law, cited the case of **Joseph Ndyamukama (Administrator of the Estate of the late Gration Ndyamukama vs N.I.C Bank Tanzania Limited 2 others**, Civil Appeal No. 239 of 2017 CAT - which relied on the holding in the case of **Sheikh Ahmed Said vs The Registered Trustees of Manyema Masjid** [2005] T.L.R 61 and **Alnoor Sharif Jamal vs Bahadur Ebrahim Shamji**, Civil Appeal No. 25 of 2006 (unreported), where it was held inter alia that, it is elementary principle that each issue framed must be decided or resolved, and failure to do so renders the judgment defective. He asked this court to find that the 1<sup>st</sup> appellate court erred in law, therefore the appeal be allowed basing on the above grounds.

Regarding the submission in chief by the 2<sup>nd</sup> appellant the counsel submitted that, on his side he tendered enough evidence before the trial Primary Court, especially at page 25 of the proceedings that the 2<sup>nd</sup> appellant was given the said house by his son called Joshua Elias Masonga in 2010 and tendered Exhibit "A" dated 22 August, 2008 which was the sale agreement between Katemi Shenyenge and Joshua Elias, and exhibit "B" which is the transfer agreement between himself and Joshua Elias

Masonga, he said these documents were enough to warrant the court to sustain the objection of attachment, therefore the decision of Primary Court has no illegality, impropriety or misdirection in arriving to its decision, and that the trial court was at best to see and assess the demeanor and credibility of the witness.

He asked the court to find that, according to rule 45 (1) of the Magistrate Courts Act (Civil Procedure in Primary Courts) the evidence was given in compliance of the Rule and Regulation 8 of the Rules of Evidence in Primary Court.

Further to that, he also said his evidence proved that, the said house was a family property and did not belong to the judgment debtor. He supported his stand in the case of **Saadat Abdulaziz Rais vs Wanzagi Selemani Makongoro & 2 others**, Revision No. 281 of 2020, which held *inter alia* that in execution, the property which is supposed to be attached must be of the judgment debtor.

He further relied on the case of **Helena Kishiwa vs Denisa Tebuye & 3 others**, Misc. Land Application No. 374 of 2016 where it was

held *inter alia* that, it is wrong to attach the property which is not in the names of the judgment debtor.

Regarding the 4<sup>th</sup> ground, he submitted that the 1<sup>st</sup> appellate court did not consider his evidence which makes the decision to be uncertain. On that base he prayed the appeal to be allowed with costs.

In reply to the submission by the 1<sup>st</sup> and 2<sup>nd</sup> appellant's written submissions, the respondent first submitted that the submission filed by the 1<sup>st</sup> appellant has two short comings, one, that it was filed in excess of four pages which is the page limit ordered by the court, two, that the same has not been signed by the Advocate who drew it in contravention of section 44 of the Advocates Act, [Cap 341 RE 2019]. He prayed that the exceeded pages be expunged from the written submission and that since the submission was not so signed, then the same be disregarded for failure to abide to the order of the court.

Responding to the first ground of appeal he said there is no law prohibiting an appeal which is against the decision of the Primary Court in objection proceedings. He submitted that the law applicable in those proceedings is the Magistrate's Courts (Civil Procedure in Primary Court)

Rules GN 310 of 1964, where under rule 53 (5) requires the Primary court to inform the parties of their right of appeal which was dully explained at the 5<sup>th</sup> page of the judgment of trial court. He also reminded the court that the other law applicable is section 20 (1) of the Magistrate Courts Act [Cap 11 R.E 2019] which requires the aggrieved parties to be informed of the right of appeal and section 20 (2) of the same law entail the circumstances in which an appeal may not be preferred, he said objection proceedings is not one of those circumstances, therefore the appeal and its resultant decision did not violate any law, and occasion any injustice to the appellant.

In respect of the second ground of appeal, which was raised by the 2<sup>nd</sup> respondent and the 3<sup>rd</sup> ground of appeal which was filed by the 1<sup>st</sup> appellant, he submitted that the first appellate court was right to intervene as the appellant did intend to hide the property from attachment with the continuing intent to decline repaying the debt with the help the appellants.

He submitted that, with that evil motive the appellants intentionally did not join judgment debtors in the objection proceedings hearing process, they also effected fraudulent documentation purporting to have transferred to the objectors.

He submitted that the evidence shows that the attached houses were used as security by the judgment debtors who after losing the case made their effort to transfer the same to the appellants. For instance the 1<sup>st</sup> appellant purported to have concluded the sale agreement on 17/03/2020, while the same had already been transacted to the respondent since the year 2017.

Further to that, they both relied on the documents which were unstamped contrary to section 47 of the Stamp Duty Act [Cap 189 R.E 2019], hence their admissibility was improper.

Regarding the analysis of the evidence, he submitted that, the 1<sup>st</sup> appellate court observed and concluded that, objection proceedings was fatal as were conducted without joining the judgment debtors. The conclusion also based on the contradictions in the purported deed of settlement which had not complied with the requirement of the law i.e Stamp Duty Act (supra), therefore basing on these grounds, the 1<sup>st</sup> appellate court was justified on its findings.

Regarding the last ground that, the trial court did not decide on all issues, he submitted that this is a new ground of appeal raised at this

stage without first obtaining the leave of the court. This is because according to him, the ground which is in the petition of appeal is to the effect that, the trial court did not decide on all issues without assigning reasons. Going through the submissions by both appellants the counsel are submitting on the 1<sup>st</sup> appellate court's omission of some issues raised.

The counsel contended that it is unacceptable in legal practice to add or alter the grounds of appeal without leave of the court and this is contrary to rule 15 of the Civil Procedure (Appeal in Proceedings Originating in Primary Courts) Rules G.N. 312 of 1964, therefore renders the 4<sup>th</sup> ground of appeal to be abandoned, and to have no effect on appeal.

He by way of conclusion submitted that, even if such an abandoned ground is considered, yet still it has not been demonstrated to have been occasioned any injustice, on the part of the appellants. He in the end asked for the appeal to be dismissed with costs.

That being the summary of the submissions by the counsel for the parties, I will start with the issues raised by the counsel for the respondent at the outset of his submissions in reply, that the submission by the 1<sup>st</sup>

appellant was filed in pages more than four pages ordered as a page limit of the submission, which the court ordered the same to be not more than 4 pages. The second issue raised is that the submissions were not signed by the Advocate who prepared them contrary to section 44 of the Advocates Act [Cap 341 RE 2019]. He asked the exceeding pages be expunged and the while submission be not acted upon for the failure to comply with law.

I entirely agree with Mr. Maligisa Sakila counsel for the respondent that once court orders the manner in which the proceedings should be conducted, then parties to those proceedings must respect the order of the court. This has been insisted in the case of **Athuman Kungubaya & Another vs PCRC & TTCL, HC - DSM** (unreported) in which it was held inter alia that;

*"Court order should be complied with for the betterment of Administration of Justice. To allow a party to any proceedings to do things contrary to court orders not only it show disrespect to the court but also create chaos to the entire process of administration of justice. That things should not be allowed to occur".*

On 04/08/2021 when I scheduled the manner in which the submission should be filed, I ordered parties to limit their submissions into the maximum limit of four pages. The counsel for the 1<sup>st</sup> appellant in his

submission in chief filed six pages. In the normal course, I would have limited my consideration to four pages, but as the fault was committed by the Advocate, not the 1<sup>st</sup> respondent, it will be unfair to punish a party for the fault committed by his/her Advocate. On that base and having been driven by the principle of overriding objective as introduced to the CPC by the written Laws Misc. Amendments (No. 3) Act, 2018 Act No. 08 of 2018 as interpreted in the case of **Yakobo Magoiga Gichere vs Peninah Yusuph**, CAT Mwanza – 2018, I will consider all the pages for the sake of justice.

The other point so raised is that, the submission by the 1<sup>st</sup> respondent was not endorsed at by a person who prepared the same, contrary to section 44 of the Advocates Act (supra). This provision requires every legal instrument to be endorsed with names and address of the drawer. That is according to the marginal note of the section. The catch word here is the term "instrument".

My brother Hon. Kisanya, J in the case of **Rocket Mahega Vs Msafiri M. Msemba & 3 others**, Misc. Land Application No. 62/2020. HC-Musoma, held *inter alia* that, that every person who draws or prepares any

instrument in contravention of section 43 shall endorse or cause to be endorsed there on his names and address.

In Black's Law Dictionary 4<sup>th</sup> Edition, the term "instrument" is defined to include,

*"...a written document, a formal legal document in writing .... and it includes anything which may be presented as evidence to a sense of the adjudicating tribunal."*

Now looking at the definition above it goes without saying that written submission being not one of the documents listed in the definition above, and being not evidence as held in the case of **Maliki Salum Mpolau vs Bahati Athuman Mshana** Mic. Civil Application No. 164 of 2020, that submission is a summary of argument not evidence. Also see **Tuico at Mbeya Cement Company Limited vs Mbeya Cement Company Limited & Another** (2005) TLR 41 in which it was held by the court of Appeal that,

*"it is now settled that submission is a summary of arguments. It is not evidence and cannot be used to introduce evidence".*

That being the case, then submission is not an instrument therefore it is not subject to strict application of the rule in section 44 of the Advocates Act (supra), the argument fails for that reason.

Now, having resolved these two issues, let me go to the merits of the appeal, and I will discuss and dispose one ground of appeal after the other in the manner they were argued by the parties. From the first ground of appeal raised by the counsel for the 1<sup>st</sup> appellant, this court needs to examine one issue that is whether decision arising from objection proceedings is appealable in law.

From the plethora of the decisions cited and relied upon by this court and the Court of Appeal as listed herein above in the submissions by the counsel for the 1<sup>st</sup> appellant, as reflected at page 9 of this judgment, a person aggrieved by objection proceedings has no right to appeal against the decision arising in those proceedings. If he is the decree holder, he may approach the higher court for revision but if it is the objector or judgment debtor he may institute a suit to claim for the property in question.

This means, it was therefore improper for the judgment debtor to file an appeal, and therefore the 1<sup>st</sup> appellate court heard and determined an appeal without jurisdiction, the first ground of appeal is found to be meritorious and allowed.

The other issue raising the legal question is the fact that, the matter before the 1<sup>st</sup> appellate court was dealt with basing on the provision of Civil Procedure Code Cap 33, which is not relevant and applicable to the Primary Court or proceedings which originate from Primary courts. I also entirely agree with the argument raised by the respondent that it was not proper for the 1<sup>st</sup> appellate court to use Civil Procedure Code in the proceedings that originates from Primary Court, as the law applicable in appeal originating from Primary Court is Civil Procedure (Appeal in Proceedings Originating in Primary Courts) Rules GN No. 312 of 1964. These rules apply to all proceedings in the District Court or High Court, which originates from Primary court, see. Rule 2 of the said Rules. Therefore the 1<sup>st</sup> appellate court was wrong when it referred and relied on the provision of the Civil Procedure Code [Cap 33 R.E. 2019].

Regarding the 3<sup>rd</sup> ground of appeal which raises a complaint as to whether there was any illegality, impropriety, or misdirection in arriving at

the trial court decision in objection proceedings, taking into account the fact that, the trial court was at best to determine the matter after assessing the demeanor and credibility of witness.

As it has already been held that, the 1<sup>st</sup> appellate court had no jurisdiction to receive and admit an appeal arising from objection proceedings before the Primary Court. However, its supervisory powers, and the powers of this court in supervising the courts subordinate to it have not been ousted by that principle. This means that this court or the District Court can admit and hear an appeal arising out of objection proceedings, but where there is evidence that, there was illegality, impropriety, irregularities or any misdirection in arriving at the decision in such subordinate court or consideration of irrelevant matter or non consideration of important principle of law this court still retains the powers to correct the mistakes.

While the appellant submit that there was no such illegality, irregularities or misdirection or non consideration of relevant matters, or consideration of irrelevant matters in its decision, the respondent has alleged that there are plenty of them. Citing the illegalities, he submitted

that the objection proceedings were conducted without involving the judgment debtors, it was between the objectors and the decree holder.

Secondly that the documents which were relied upon to justify sales and consequential transfer of ownership were in contravention of the law, particularly section 47 of the Stamp Duty Act [Cap 189 R.E 2019].

The third and last, irregularity is that the court did not consider that the judgment debtors had already pledged the said house as security of the business loan.

To appreciate as to whether there was or no such illegalities, I find it pertinent to revisit the provision of the law which provided for objection proceedings, in the attachment made in execution of the decree passed by the Primary Court. Objection of attachment in the proceeding of this nature before the Primary Court is provided by Rules 69 and 70 of the GN 310 of 1964.

Rule 69 provides for the circumstances in which the objector is the judgment debtor himself, while Rule 70 provides for the circumstances in which the objector is the 3<sup>rd</sup> party. This case falls under Rule 70 because the objectors were not the judgment debtors; they were 3<sup>rd</sup> parties who

allege to have interest in the properties attached in execution of the decree.

For easy reference, I feel indebted to quote in extensor the relevant provision.

Rule 70;

- i. Any person, other than the Judgment debtor, who claims to be the owner of or to have some interest in property which was been attached by the court may apply to the court to release the property from the attachment, stating the ground on which he bases his objection.*
- ii. On receipt of an application under sub rule (1) the Court shall fix a day and time for hearing the objection and shall cause notices thereof to be served upon the objector, the Judgment creditor and the Judgment debtor.*
- iii. No order for the sale of such property shall be made until the application has been determined and if any such order has been made, it shall be postponed.*
- iv. On the day fixed for the hearing the court shall investigate the objection and shall receive such evidence as the objector, Judgment creditor and the Judgment debtor may adduce.*
- v. That is the court is satisfied that the property or any part of it does not belong to the Judgment debtor it shall make an order releasing it or such part of it from the attachment.*

From this provision, in precise words the followings are the conditions for the court to follow in entertaining and determining the objection proceedings;

- i) The objector has to show (prove) to be either the owner or to have some interest in the properties which has been attached by the court before the court is mandated to release the attached property.
- ii) That the hearing of the objection mandatorily required to involve, the objector, the judgment creditor and the judgment debtor, all of whom shall be summoned by the court.
- iii) During the pendency of the raised objection the court is obliged to postpone the sale until it determine the objection.
- iv) The objector shall be required to give evidence, the respondent shall be given a chance to counter, then the court shall investigate the truthfulness of the allegation.
- v) For the attached properties to be released, the objector must give evidence to satisfy the court that the property belongs to him or that he has interest in the property.

Looking at the proceedings before the trial primary court in the objection proceedings, the court is clear and it has not been disputed that, the original suit subject to execution before the trial Primary Court, that is Civil Case No. 391 of 2020 was between James Kitindi Kisena vs Zakaria Masala Muhula and Robert Elias Masonga, while in the objection proceedings parties were, Onesmo Samwel Kisabo and Elias Masonga, (both being third parties) vs James Kitindi Kisena. In the objection proceedings the judgment debtors were left out, and therefore, hearing and determination of the objection proceedings and the appeal before the 1<sup>st</sup> appellate court and before this court, the judgments debtors were not involved.

The omission to involve the judgment debtors is fatal as it goes against the mandatory provision of Rule 70 (2) of GN 310 of 1964 which requires the involvement of all parties.

Further to that, failure to involve them left a lot to be desired, because the said properties were pledged as security to secure the loan by the judgment debtors the fact which has not been disputed. Therefore before the objection was raised, by the decree holder believed that the properties were actually of the judgment debtors. That being the case the

involvement of the judgment debtors was necessary for them to confirm that the property were really transferred to the objectors, short of that proof, left no base upon which the trial court could have believed without suspecting the objector to be comen.

That being the case, I find the omission to involve the judgment debtors to be a fatal irregularities which entitles this court in its capacity under section 30 (1) and 44 (1) (a) of the Magistrates Courts' Act, (supra) to intervene in the matter and rectify the same. On that base, I hereby revise the decision of the District Court as it was given without appellate jurisdiction. However, the court would have invoked its superior powers under section 22 of the Magistrate court's Act, and revise the proceedings.

Since it failed to do so, therefore under the authority of section 30 (1) read together with section 44 (1) (a) of the Magistrates Courts' Acts (supra) do hereby revise the proceedings of both courts, quash them after finding them to be fatally irregular, for failure to comply with mandatory provision of rule 70 (2) of G.N 310 of 1964.

Now having so quashed the proceedings and order, what should be the proper recourse? Now since the nullification and quashing of the proceedings in objection proceedings has based on the non compliance of the law, I thus direct the matter (objection proceedings) to be heard de novo by another Magistrate with competent jurisdiction, with a new set of assessors whereby all parties including the judgment debtors be involved in the proceedings.

It is accordingly ordered.

**DATED at MWANZA, this 27<sup>th</sup> September, 2021**



**J. C. TIGANGA**

**JUDGE**

**27/09/2021**