

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 36 OF 2013

ALEX MAGANGAAPPLICANT

VERSUS

ABUBAKARI MKAKILE & ANOTHERRESPONDENTS

(Application to dismiss High Court Land Appeal No. 74 of 2009 and leave to appeal to the Court of Appeal of Tanzania from the Ruling of the High Court Land Division at Dar es Salaam.)

(Mansour , J.)

Dated the 20th day of February, 2013

in

Land Appeal Case No. 74 of 2009

RULING

18th & 22ND April, 2016

MBAROUK, J.A.:

In this application, the applicant is seeking the orders of this Court for two distinct prayers. **One,** is to dismiss the decision of the High Court Land Appeal No. 74 of 2009 and

Two, the applicant is seeking for leave to appeal to the Court of Appeal. His notice of motion is made under Rule 45(b) of the Court of Appeal Rules, 2009 (the Rules). The notice of motion is supported by the affidavit of the applicant Alex Maganga.

When the application was called on for hearing, the Court wanted to ascertain whether or not the same in its present form is properly before it. This is because of the presence of two distinct prayers in one application. In other words, the application was omnibus by nature.

In this application, the applicant fended for himself, whereas the 1st Respondent was represented by Mr. Audax Vedasto, learned advocate. However, the 2nd Respondent though duly served but failed to enter appearance, I therefore

invoked Rule 63(2) of the Rules and proceeded to hear the application in his absence.

At the hearing, I noted that the learned advocate for the 1st Respondent filed his notice of preliminary objection but prayed to withdraw it under Rule 4(2) (a) of the Rules after having realized the defect raised by the Court. The Court then granted his prayer.

Thereafter, the applicant readily conceded to the defect raised by the Court as the issue was a legal one and he was a lay person.

On his part, Mr. Vedasto, also conceded to the defect and urged the Court to find the application incompetent and hence strike it out.

According to the Court of Appeal Rules, 2009, there is no room to combine those two distinct prayers to be made in one application. An application to dismiss the decision of the High Court cannot be combined with an application for leave to appeal otherwise such an application will be omnibus.

In the decision of this Court in the case of **Rutagatina C. L. v. The Advocates Committee and Another**, Civil Application No. 98 of 2010 (unreported), the Court stated as follows:-

"In the totality of the foregoing, we are satisfied that the Rules do not provide for an omnibus application. For this reason, we hereby strike out this omnibus application."

As I have already established that in this application the applicant has combined two prayers in one application that surely renders the application omnibus. For being omnibus, I find the application incompetent, hence I strike it out.

DATED at **DAR ES SALAAM** this 19th day of April, 2016.

M.S. MBAROUK
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


Z.A. Maruma
DEPUTY REGISTRAR
COURT OF APPEAL