

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

MISC. CIVIL APPLICATION NO. 16 OF 2019

(Arising from Kigoma District Court, Misc. Civil Application no. 1 of 2018, Civil Application no. 04 of 2019, Civil Review no. 2 of 2019 and Civil Review no. 5 of 2019, Originating from Nguruka Primary Court, Civil case no. 48 of 2017)

ELIKANA BWENDAAPPLICANT

VERSUS

SYLIVESTER KUBOKORESPONDENT

RULING

Dated: 12/3/2020

Before: Hon. A. Matuma – Judge

This is a ruling in respect of a preliminary objection raised by the respondent against the applicant's application for extension of time, Revision, costs and any other relief.

The applicant had preferred this application under section 14 (1) of the law of Limitation Act, Cap 89 R.E 2002 and section 79 (1) (2) of the Civil Procedure Code, Cap. 33 R.E 2002 for the reliefs herein above named.

The respondent raised two preliminary points of objection namely, that the application is bad in law for being **omnibus** and two, that the application is misconceived for having been **overtaken by event**.

On 19/2/2020 when this application came for mention, the applicant was present in person unrepresented while the Respondent was advocated by Mr. Ignatius Kagashe leaned advocate.

As the applicant is a lay person and the matter before me is a legal contention I directed the parties to argue the preliminary issues by way of written submissions the schedule of which was complied by the parties.

In the first limb of the preliminary objection Mr. Kagashe learned advocate submitted that despite of there being no specific provision of the law that directly prevents omnibus applications, case laws have provided for and against the doctrine depending on the nature of the reliefs and circumstances of each case. He further argued that since in the instant application different reliefs under different laws are being sought under a single application, the same is bad in law wealthy to be struck out and or dismissed. He cited the case of **Ali Chamani versus Karagwe District Council and another, Civil Application No. 411/4 of 2017 CAT at Bukoba.**

The applicant on his party in resisting the objection submitted that the application is properly before this court for having been brought under the relevant enabling provision. He also cited the decision of the court of appeal in the case of **Kashinde Machibya versus Hafidhi Said, Civil Application No. 48/2009** in which the applicant was granted different reliefs under a single and same application without being held to be an omnibus. He also relied in the case of **Tanzania Knitwear Limited versus Shamsha Esmail (1989) TLR 48** in which it was held;

"The combination of two applications in one is not bad in law since courts of law abhor multiplicity of proceedings".

The issue is thus, whether the application before me is bad for being omnibus.

I have come across a chain of authorities in the court of Appeal decisions which forbids omnibus application. Some of those authorities in addition to that of **Ali Chamani** supra are; ***Siri Nassir Hussein Siri versus Rashid Musa Mchomba (administrator of the Estate of the deceased Musa Mchomba Massawe), Civil application No. 23 of***

2014, Mohamed Salimin versus Jumanne Omary Mapesa, Civil application No. 103 of 2014 just to mention a few.

In all the herein cited authorities, the court held that different and distinct applications should be filed separately and that lumping them together renders the application incompetent and liable to be strike out.

In the instant application the applicant seeks extension of time within which he may apply for Revision of four different revisions of the District Court of Kigoma at Kigoma. Within the same application he is applying for Revision of the said decisions.

I have found it difficult to handle this application because while the applicant prays for extension of time to apply for revision, he has already applied for Revision within the same application of the extension of time. In the circumstances both the two applications are pending in this court for determination.

The questions which arises are;

- i. Which time does the applicant need if the intended application for revision upon which extension of time is being sought is already in court pending for determination.**
- ii. Since Revision application is already lodged in this court way back on the 16th December, 2019, should the application for extension of time be entertained to come with retrospective effect to legalize the already filed Revision application.**
In the other way, does extension of time given retrospectively to give life to matters pending in court which are out of time.

iii. The application for Revision having been filed already but out of time can it be justifiably be entertained by this court?

With these questions in mind I find it difficult to entertain this application for being bad in law for omnibus. The applicant ought to have first applied for extension of time in respect of each application he thought to be Revised. If granted the extension he would file different applications for Revision in respect of each impugned decision and thereafter apply to have them consolidated for easy determination. This is because each application intended to be reviewed was independent of the other, decided in different case files, at different times and before different Magistrates. It is impossible to give omnibus extension of time to four different applications whose background differs and ought to have each accounted for its delay.

On the application for Revision which is in fact already filed but it is out of time, this court cannot call for records of the lower court prior to the applicant to have obtained extension of time for it.

It is impracticable to entertain the two applications together for the reasons I have advanced herein above.

The authority relied by the applicant that of **Kashinde Machibya supra** is distinguishable in the circumstances of this matter for two reasons;

One, in it the issue on whether the application was **omnibus** was not there nor discussed.

Two, there was no distinct applications made but a single application on different related reliefs arising from the same matter.

In the instant application extension of time is a distinct application under a different law altogether to the application ~~for~~ Revision, the latter

depending on the outcome of the former. Revision application should not have been on court record unless time for it would have been extended.

On the other hand, extension of time cannot be entertained because the intended action to be taken (Applying for Revision) has already been done. The availability of the Revision application on record do away with the required extension of time because the court cannot grant extension of time retrospectively. The application for extension of time is frivolously made for no action will be taken as the intended one has already been done.

In the case of **Mohamed Salimin supra** the court of appeal had the following observations;

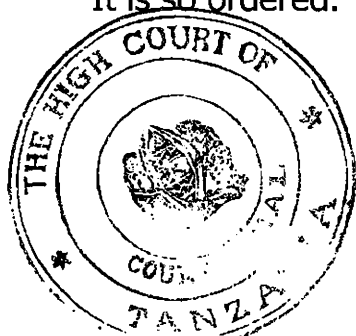
"As it is, the application is omnibus for combining two or more unrelated applications. As this court has held for time (s) without number an omnibus application renders the application incompetent and is liable to be struck out".

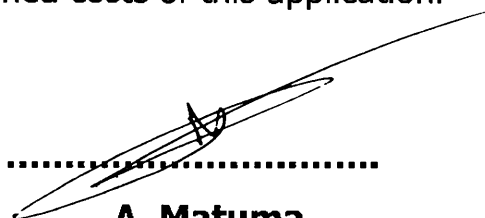
That being the legal position, I am constrained to rule out as hereby do that the instant application is incompetent for being omnibus and the same is struck out.

The first limb of the preliminary objection having been sustained, I can see no justifiable cause to resort into the remaining ground of objection.

The applicant is condemned costs of this application.

It is so ordered.



A handwritten signature in black ink, slanted upwards to the right, positioned above a horizontal dotted line.

**A. Matuma,
Judge,
12/3/2020**