IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MWANZA DISTRICT REGISTRY)

AT MWANZA

MISC. LAND APPLICATION NO.07 OF 2020

RESTITUTA EPAINETO SAMSON

NG'WANANOGU *(As Administratrix pendente*

lite of the Estate of the late Hosea Mashimba) ..... **APPLICANT**

VERSUS

META SHILOGILE ..... **1ST RESPONDENT**

MAKOYE NYAGA ..... **2ND RESPONDENT**

RULING

1th April, & 15th June, 2021

ISMAIL, J.

The applicant has preferred the instant application, praying for several reliefs, all of which touch on the enlargement of time with a view to challenging the decision of the Court (Hon. Madeha. J.,) to the Court of Appeal of Tanzania. In the decision sought to be impugned, the Court allowed an appeal which was instituted by the respondents, against the decision of the District Land and Housing Tribunal for Geita at Geita (DLHT). The proceedings in the DLHT were commenced by the late Hosea

Mashimba, for a declaration that he is the lawful owner of a hundred-acre farm land situated at Kabezo village, Magulukunda Ward in Sengerema District. The deceased alleged that half of the farm was sold to him by the 1st respondent, while another half was given as a gift by the same person. There was also a prayer for a declaratory order that an 80-acre piece of land, attached in execution of a decree in Civil Case No. 7 of 2014, is also part of the late Mashimba's farm. These declaratory orders were granted. Dissatisfied with the DLHT's decision, the respondent instituted an appeal in this Court. In its decision delivered on 15th July, 2019, the Court partly allowed the appeal by halving the applicant's ownership of the land to only 50 acres. It is this decision that has triggered the applicant's journey to the Court of Appeal.

The application has encountered an impediment. The impediment resides in the objections raised by the 2nd respondent, challenging the competence of the application. These objections are:

1. *That the application is bad in law for lumping many prayers in one chamber summons/application.*

2. *That this court is not properly moved to act on the application.*

Hearing of the preliminary objections took the form of written submissions, filed by the parties in conformity with the schedule for filing, set by the Court.

Submitting on the respondents' behalf was Mr. Pauline Michael, learned counsel. With respect to the first limb of the objections, his contention is that the application carries six prayers which are preferred under different provisions of the law, drawn from different statutes. This, he contended, creates some difficulty for the Court to understand which specific provision of the law is meant for which specific prayer, considering that even the prayers are in diversity. The counsel singled out the second prayer in the application in which the applicant is praying to be joined in the instant proceedings and the intended appeal to the Court of Appeal. He argued that it is not clear which of the said provisions caters for that specific purpose, arguing further that even the supporting affidavit contains no specific facts that support the application for joinder of the applicant in the proceedings. Mr. Michael buttressed his arguments by citing the decisions of the Court of Appeal of Tanzania in ***Rutagatina C.L. v. The Advocates Committee & Another***, CAT-Civil Application No. 98 of 2010; and ***Mohamed Salimin v. Jumanne Omary Mapesa***, CAT-Civil

Application No. 103 of 2014 (both unreported). In the latter, the superior Bench held:

> *"There is one other difficulty relating to this application. 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 is incompetent and is liable to be struck out."*

The counsel urged the Court to strike out the application with costs.

With regards to the second limb of objection, the argument by Mr. Michael is that the chamber application contains mixed provisions drawn from different statutes which do not refer to specific prayers. It was his contention that, for that reason, it is difficult to understand which of the said provisions is directed to which prayer in the chamber application. Believing that this was a flawed conduct, Mr. Michael prayed that the application be struck out.

Mr. Kassim Gilla, learned counsel for the applicant, chose to combine his responses to the objections into one submission. While admitting that the application is omnibus, Mr. Gilla contended that the prayers sought therein are inter-related and are not diametrically opposed to one another. He further argued that the said prayers fall within the Court's jurisdiction and, therefore, grantable. The counsel argued that the prayers are all

properly supported by the affidavit sworn by the applicant. Mr. Gilla fortified his argument by citing the decisions in ***Philemon Joseph Chacha & Others v. South African Airways (Prop) Limited & Others*** [2002] TLR 246; ***Tanzania Knitwear Ltd v. Shamsho Esmail*** [1989] TLR 48; ***The Serious Microfinance Tanzania v. Anastasia Lupakisyo***, Labour Revision No. 6 of 2019; and ***MIC Tanzania Limited v. Minister for Labour and Youth Development & Another***, CAT-Civil Appeal No. 103 of 2004 (both unreported). In all of the decisions, the holding is that combination of two applications in one is not bad, as long as there is no specific law barring it, and more so, since courts abhor multiplicity of proceedings. It was the learned counsel's further view that his decision to combine several prayers was also vindicated by the provisions of Order II Rule 3 (10 and sections 3A (1), (2) and 3B (1) (a), (b) and (c) of the Civil Procedure Code, Cap. 33 R.E. 2019 which call for timely disposal of proceedings with a minimum of costs.

Drawing a distinction between the instant application and authorities cited by the 2nd respondent's counsel, Mr. Gilla contended that whereas the prayers in the instant application are inter-related, in the said decisions the prayers were distinct and involving trial or determination before different forums. In brief terms, the prayers in the cited cases were diametrically

opposed to one another and involving different provisions of assorted laws. The counsel argued that the objections raised are devoid of any merit, and urged the Court to dismiss them with costs.

Having dispassionately reviewed the application, the prayers made therein, and the rival but impressive arguments by the counsel, the profound question to be resolved is whether the application is competent.

I choose to begin with ground two of the objections. In this ground, the counsel contends that the Court has not been properly moved to act on the application. The contention by the counsel is that the provisions under which the application is made are mixed and making no specific reference to specific prayers. I must admit, my mind is unable to comprehend the import of this objection. This is primarily because there is no provision of the law that I know of, which requires that every provision of the law cited in an application must be paired or tied to a prayer sought in the application. The duty of the applicant is to ensure that a provision of the law he cites is relevant and it enables the application, while the Court is charged with the duty of assessing if they (the provisions) are appropriate in the circumstances. Requiring the applicant to do the matching is, to say the least, uncalled for, and failure to do so does not render the application incompetent as the learned counsel would want this Court to believe.

Since the 2nd respondent's 'demand' is nothing but a surplus to the requirement of the law, I take the view that this objection is lacking the cutting-edge requisite to qualify it as a preliminary objection. Consequently, I choose to overrule it.

As I turn my attention to the first limb of the objections, I find it apt to quote the reasoning of this Court in ***Gibson Petro v. Veneranda Bachunya***, HC-Civil Revision No. 10 of 2018 (MZA, unreported). It was held at pp. 7 and 8 as follows:

> *"Let me start by setting the record straight, that the law is quite settled and clear in our legal system, that combination of several prayers in one application is not an abhorrent practice, especially where the prayers, as both counsel unanimously agree, are related and they can be dealt with through the same provisions of the law or by the same piece of legislation. This position was enunciated in* ***Tanzania Knitwear Ltd v. Shamshu Esmail*** *[1989] TLR 48. The principle was cemented in* ***MIC Tanzania*** *(supra). The rationale for this is, as correctly submitted by the counsel for the applicant, to tame needless multiplicity of applications which are time consuming and resource guzzlers.*
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> *However, where an application contains two or more prayers which are diametrically opposed to each other;*

and/or where the governing provisions of the law are different, time frames for applications are different; and where considerations to be taken into account in determining them are different, such application is said to be omnibus and, therefore, incompetent."

From this excerpt, the clear message is that combination of the applications is, subject to the conditions set out in the cited decision, an allowable good practice. The question then is whether the instant application is a fit case in which such combination is not abhorrent.

As stated earlier on, the application has four substantive prayers three of which are for extension of time, while the other one is for inclusion of the applicant as a party in the instant application, which serves as a prelude to her journey to the Court of Appeal. As clearly shown in the application, these prayers have been preferred under four distinct pieces of legislation. Whereas all of the said prayers are triable by this Court, and prayer 2 is seemingly consequential to prayer 1, as is prayer 4 to prayer 3, my take is that all of these prayers are not only distinct but they also operate under different laws. These prayers require different considerations. For instance, while prayers 1, 3 and 4 require the applicant to demonstrate that sufficient cause exists for enlarging time, in prayer 2, the applicant's obligation is to demonstrate that she is has what it takes to

get involved in the proceedings to which the late Mashimba was a party. This means that the Court's considerations in granting or refusing any of these prayers will be varied depending on the demands set in each of the enabling provisions of the law. Thus, whilst a combination of these prayers, as avidly defended by the counsel for the applicant, serves to achieve expedience and the much-needed cost saving - key considerations underscored in ***Tanzania Knitwear Ltd*** (supra) and ***MIC Tanzania Ltd*** (supra), - such considerations are, in the circumstances of this case, a recipe for confusion. This, therefore, rules out the contention that the prayers are inter-related. I am fortified in my resolve by the reasoning set in ***Ally Chamani v. Karagwe District Council & Columbus Paul*** CAT-Civil Application No. 411 of 2017 (Bukoba-unreported); ***C.L. Rutagatina v. The Advocates Committee & Another***, CAT-Civil Application No. 98 of 2010 (DSM-unreported; and ***Gibson Petro*** (supra). In ***Ally Chamani*** (supra), the upper Bench observed as follows:

> *"After having dispassionately examined the notice of motion and the reliefs sought by the applicant, I agree with Mr. Kabunga together with the applicant's concession that the application is not properly before the Court because of being omnibus. I say so because, it seeks three distinct reliefs which are* ***one****, extension of time to give a*

notice of appeal against the High Court decision; ***two****, extension of time to file an application for leave to appeal to the Court of Appeal;* ***three****, leave to appeal to the Court of Appeal. This application goes contrary to the spirit of Rules 44-66 which govern applications as they each provide for a distinct application according to the type or category of relief sought."*

Inspired by the reasoning in the just cited passage, I take the view and hold that the instant application suffers from the malady which cannot be cured by the applicant's well-intentioned objective of serving time and operating in expediency. Consequently, I find this objection sound and plausible, and I sustain it and order that the application be struck out with costs.

Order accordingly.

DATED at **MWANZA** this 15th day of June, 2021.

M.K. ISMAIL

JUDGE

Date: 15/06/2021

Coram: Hon. M. K. Ismail, J

Applicant: Mr. Kassim Gilla, Advocate

Respondents: 1st, 2nd Absent

B/C: P. Alphonce

Court:

Ruling delivered in chamber, in the presence of Mr. Kassim Gilla, learned Counsel for the Applicant, and in the absence of the respondents, this 15th day of June, 2021.

M. K. Ismail

JUDGE

At Mwanza

15th June, 2021