

IN THE HIGH COURT OF TANZANIA

AT BUKOBA

LAND CASE APPLICATION NO. 68 OF 2020

NURU RAMADHAN (Administrator of the estate of
the late Zainabu Mussa).....**APPLICANT**
VERSUS

NURU ABDARALLAH MBEHOMA.....**RESPONDENT**
(Application for extension of time to file application for review
and application for reviewing the order of this court
in Land Case Appeal No. 39 of 2014)

RULING

20 & 23 July, 2021

MGETTA, J:

On 26/10/2020, the applicant Mr. Nuru Ramadhani (administrator of the estate of the late Zainabu Mussa) through a legal service of Ms. Liberatha Bamporiki Revocatus, the learned advocate filed a chamber summons supported by an affidavit sworn by herself. The chamber summons is made under **Section 14 (1) of the Law Limitation Act, Cap 89** and **section 78 (1) (a) and Order XLII rule 1 (9) of the Civil Procedure Code Act 1966, Cap. 33**. The applicant is praying for the following orders:

1. For extension of time to file application for review against the order of this court dated 28/9/2015 in Land Case Appeal No. 39 of 2014.

2. For application for reviewing the order of 28/9/2015 made by this court in Land Case Appeal No. 39 of 2014.

Following the filing of chamber summons, the respondent Nuru Abdalah Mbehoma, together with filing counter affidavit he also filed notice of preliminary objection raising points of law which I have summarized as hereunder:

1. The application contravenes the provisions of Order xxxix rule 19 of the Civil Procedure Code Act, Cap. 33.
2. The application is an omnibus hence it cannot be maintainable in law.
3. The application is incompetent for being fitted wrongly contrary to rule 8 (2) of GN 96 of 2005 of the High Court Registry Rules.
4. The application on affidavit is not maintainable in law for being prepared, sworn and signed by the same advocate who represents the applicant.

When the preliminary was placed before me for hearing, Ms Leberatha appeared for the applicant; while the respondent, a layperson appeared in person unrepresented.

I strength away endeavored to answer what were submitted. I started with 2nd preliminary objection raised by the respondent of whether

the application is omnibus. In her submission, Ms Leberatha stated that the application before me is proper and competent. The court has power to dismiss the preliminary objections and then grant the extension of time as well proceed to review the order it made on 28/9/2015. The respondent being a layman had nothing substantial to submit.

When I glanced on the chamber summons, I asked Ms Leberatha to address me on the propriety of the chamber summons. She confidently stated that the chamber summons is in order and the court may grant both prayers sought.

It is my conviction that application to review the order of this court made on 28/9/2015 is entirely dependent on the outcome of the application for extension of time within which to file the same. When the application for extension of time is heard and granted, then the applicant will be given time to prepare and file an application for review. If I exercise the discretion of this court and refuse to grant the extension of time, then the applicant shall have no room to come before this court equipped with an application for review.

In the same vein, the two mixed prayers in the chamber summons are preferred under different and distinct laws. I agree there are some

situation it is not fatal to mix up prayers, but in application of this type, it is disallowed to mix up prayers catered under different laws in one chamber summons. Otherwise, that would amount to an anomaly and the chamber application becomes omnibus application. It was remarked by the Court of Appeal in the case of **Jovin Mtagwaba & 85 others versus Geita Gold Mining Limited**; Civil Appeal No. 23 of 2014 (Mwanza) (unreported) at page 3 of typed ruling that:

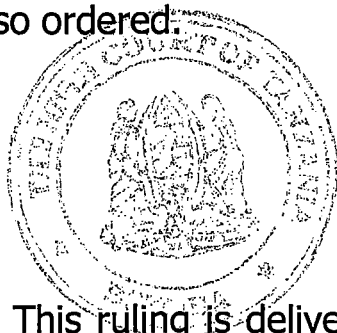
"It was irregular and improper for the High Court to mix up prayers catered under different laws in one application"

In that case of **Jovin Mtagwaba** (supra), the Court of Appeal quashed the ruling made by the High Court which granted the application for leave to file a notice of appeal as well for leave to appeal to the Court of Appeal. The two prayers catered under different laws. Similarly, in the present application, the application for extension of time under which the applicant, if granted would file application for review, is made under the **Law of Limitation Act**. Upon obtaining extension of time, it is when the applicant would come under **Civil Procedure Code Cap 33** equipped with the application for review of the order made by this court way back on 28/9/2015. Since no order for extension of time within which to file an

application for review is obtained, obviously application for review is premature.

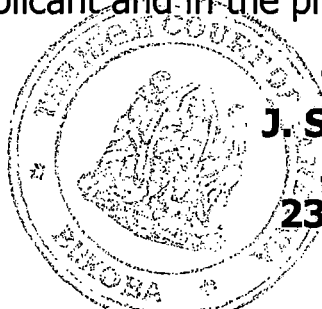
In such, without wasting time of this court pondering the remaining preliminary objections, I find the present chamber summons incompetent and I do accordingly strike it out with costs for the reasons stated herein.

It is so ordered.



J. S. MGETTA
JUDGE
23/7/2021

COURT: This ruling is delivered today this 23rd day of July, 2021 in the presence of Mr. Victor Blasio, the learned advocate hold brief for Ms Liberatha Bamporiki, the learned advocate for the applicant and in the presence of the respondent in person.



J. S. MGETTA
JUDGE
23/7/2021

COURT: Right of appeal to the Court of Appeal is fully explained.



J. S. MGETTA
JUDGE
23/7/2021