

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(BUKOBA DISTRICT REGISTRY)**

AT BUKOBA

MISC. LAND APPLICATION NO. 33 OF 2020

LUTTU ZAKARIA JUMA.....APPLICANT

VERSUS

SECRETARY GENERAL,

THE NATIONAL MUSSLIM COUNCIL OF

TANZANIA (BAKWATA)1ST RESPONDENT

HAMZA ZACHARIA ABDALLAH,

DISTRICT SECRETARY, THE NATIONAL MUSSLIM

COUNCIL OF TANZANIA (BAKWATA)2ND RESPONDENT

RULING

Date of Last Order 13/10/2021

Date of Ruling 12/10/2021

A.E. MWIPOPO, J.

The Respondents herein filed Notice of the Preliminary Objection (P.O.) on 18th June, 2020 containing four points of law. The points of Law raised are as follows;-

- 1. This Application is incompetent for failure to move properly this Court by citing proper provisions in the Chamber Summons;*
- 2. This application is incurably irredeemable defective for being preferred as omnibus application;*
- 3. The purported application is irredeemable defective for being sprinkled with non – mixable prayers under one Chamber Summons;
and*
- 4. This application is incurably irredeemable defective for being supported by a defective affidavit.*

On 30th August, 2021 the court ordered in the presence of both parties for the hearing of the Preliminary Objection to proceed on 13th September, 2021. However, the matter was placed in the civil sessions cause list and both parties were served with summons to appear for hearing on 13th October, 2021. The summons shows that the Applicant was served with summons on 08th September, 2021. On the hearing date, only the Respondents appeared in Court and the Applicant failed to appear. There was no information whatsoever for his absence. The Respondent Counsel namely Ms. Pilly Husein (Advocate) prayed for the hearing of the P.O. to proceed in the absence of the Applicant the prayer which was granted.

The Respondent's Counsel prayed to abandon points of the P.O. No. 1 and 4 and submitted on point No. 2 and 3 only. She proceeded to argue the two points of the P.O. together that the Applicant has preferred this application which is made by chamber summons supported by the affidavit. In the chamber summons, the application contains two prayers. The first prayer is for the Court to extend time for the Applicant to file an appeal against the ruling and orders dated 1st July, 2019

by the District Land and Housing Tribunal for Kagera at Bukoba. The second prayer is for the Court to issue an ex parte interim order for stay of execution of the said ruling and its extracted orders as well as an order for execution granted by the trial tribunal on 7th May, 2020. These two prayers are omnibus which need not to be made together in one application for the reason that the 1st prayer is provided under the Land Disputes Court Act, but the prayer for stay of execution is made under the Civil Procedure Code Act, thus it is wrong to join the two in one application.

The Counsel went on to argue that the 1st prayer need the Applicant to provide sufficient and good cause for the Court to grant it, which is the same to the prayer for the stay for execution where the Applicant has to provide sufficient reason for the Court to grant the prayer. She said that it is settled that omnibus application makes the application to be incompetent and she cited the case of **Mohamed Salmin V. Jumanne Omary Mapesa**, Civil Application No. 103 of 2014, Court of Appeal of Tanzania at Dodoma, where the Court of Appeal held that combination of two or more unrelated applications renders the application incompetent and is liable to be struck out. She prayed for the application to be struck out for incompetence.

As it was submitted by the learned Counsel for the Respondent, the Applicant herein has made two omnibus prayers in the application. The first prayer

is for the Court to extend time for the Applicant to file an appeal out of time against the ruling and orders dated 1st July, 2019 by the District Land and Housing Tribunal for Kagera at Bukoba; and the second prayer is for the Court to issue an exparte interim order for stay of execution of the said ruling and its extracted orders as well as an order for execution granted by the trial tribunal on 7th May, 2020.

I'm aware that there is no law which bars the combination of more than one prayer in one chamber summons as it was held in the case of **MIC Tanzania Ltd versus Minister of Labour and Youth Development, and Attorney General in Civil Appeal No 103 of 2004, the Court of Appeal, at Dar Es Salaam, (Unreported)**. The Court of Appeal in the above mentioned case was of the opinion that parties should be encouraged to adopt the procedure of combining prayers in chamber summons especially where prayers made were not diametrically opposed to each other such as where extension of time is granted, then application for leave follows.

In the case at hand, the prayers are omnibus which are provided by two different laws. The 1st prayer for a leave to extend of time is provided under the Land Disputes Court Act, Cap 216, R.E 2019, and the 2nd prayer for stay of execution is made under Civil Procedure Code Act, Cap. 33 of R.E. 2019. Under the relevant provisions of the law, an application for extension of time and an application for stay of execution are made differently. An application for extension of time are granted at discretion of the Court upon good cause shown and an

application for leave is usually granted if there is good reason, normally on a point of law or on a point of public importance, that calls for this Court's intervention (See case of **Rutagatina C.L. vs. Advocates Committee and another, Civil Application No 98 of 2010, the Court of Appeal of Tanzania, at Dar Es Salaam**). Generally, the application for extension of time is made to the Court where appeal or revision lies.

On the other hand, the application for stay of execution is granted where the execution is likely to cause difficulties to the Applicant and where it is difficult to redress it. The Application for stay of execution has its own procedures and requirements for filing which are different from the application for extension of time. The Application for stay of execution is made to the same Court or Tribunal hearing the application for execution.

Thus, I find that the omnibus applications in the present matter lumped up together applications which are based on the different provisions of the law; their determinations requires different consideration to be taken; and which has different procedures. The effects of combining two unrelated application is to make the application to be incompetent as it was held in the case of **Kilindi District Council V. Musa Nyeji and Another**, Revision No. 6 of 2019, High Court Labour Division, at Tanga, (Unreported) and in the case of **Mohamed Salmin V. Jumanne Omary Mapesa**, (Supra). Consequently, I find this application to be

incompetent for containing two unrelated applications and I hereby strike it out with cost.

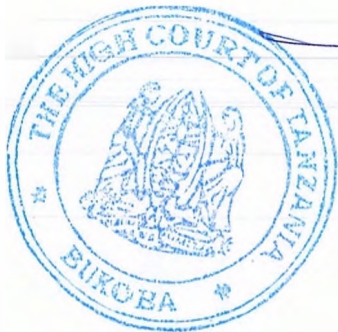


A.E. Mwipopo

Judge

13/10/2021

Court: The ruling was delivery today this 13.10.2021 in chamber under the seal of this court in the presence of the Advocate Ms. Pilly Hussein for the Respondent and accompanied by Mr. Hamza Zacharia, Secretary of BAKWATA Bukoba Municipal and absence of the Applicant.



A. E. Mwipopo

Judge

13/10/2021