THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
CIVIL REVISION NO. 1 OF 2020
(Originating from the Resident Magistrate Court of Mbeya at Mbeya, Misc. Civil Application No. 21 of 2019)

FIRST ASSUARANCE CO. LTD.....APPLICANT

VERSUS

ARON KASEKE MWASONZWE.....1ST RESPONDENT
ZHI YUAN INTERNATIONAL
TRANSPORTATION GROUP CO. LTD .....2ND RESPONDENT

RULING

Dated: 06th October & 12thNovember, 2021

KARAYEMAHA, J

This ruling is in respect of a preliminary objection raised by the respondents against an application for extension of time in which an application for revision, in respect of Misc. Civil Application No. 21 of 2019, can be heard and determined out of time and call for and examine the proceedings and orders delivered in the aforementioned application so as to this Court satisfy itself on the correctness, legality and propriety of its proceedings and orders. This application has been made under section 14 (1) of the Law of Limitation Act, Cap. 89 R.E. 2002, as well as

sections 43 (2), 44 (1) (b) of the Magistrates' Courts Act, Cap R.E. 2002 [currently both are R.E. 2019].

Along with the counter affidavit, the applicant was put to notice that on the date fixed for a hearing of the said application the respondents would raise a preliminary objection on the ground that the application is incompetent for being *omnibus*.

The applicant is enjoying the legal services of Ms. Saumu Abdi Sekulu, learned Counsel whereas the respondent is represented by Mr. Sambwe Shitambala, learned Counsel.

The thrust of Mr. Shitambala's argument is that the application is *omnibus* because it contains two prayers namely first, an order to extend time within which an application for revision in Misc. Civil Application No. 21 of 2019 can be heard and determined out of time and secondly to call for and examine the proceedings and orders delivered in Misc. Civil Application No. 21 of 2019. Thus, to him, that automatically makes the application *omnibus* because prayers are unrelated. To reinforce his position Mr. Shitambala referred to me the decisions of the CAT in case of ***Mohamed Salimin v Jumanne Omary Mapesa,*** Civil Application No. 103 of 2014, ***Ali Chamani v Karagwe District Council Columbus Paul***, Civil Application No. 411/4 of 2017 and ***Ally Abbas Hamis v Najma Hassan Ally Kanji***, Misc. Land Application No.

140 of 2017 (all unreported). Finally, he urged this court to dismiss the application.

On the other hand, Ms. Sekulu submitted that for the *omnibus* application to be accepted by law, prayers therein must be interrelated or interlinked. The learned counsel stressed that the two prayers in the current application are related in the sense that when an application for extension of time is granted the prayer for revision shall be entertained, but if the former fails automatically the latter will fail as well. She was firm in her position and referred me to the High Court decisions where *omnibus* applications have been granted in history. These include the cases of ***Msafiri Said Omari v Ally Mohamed Mbega***, PC Civil Appeal No. 72 of 2017, ***Pride Tanzania Ltd v Mwanzani Kasatu Kasamia***, Misc. Commercial Cause No. 230 of 2015, ***Meet Singh Bhachu v The Administrator of General another***, Misc. Civil Application No. 70 of 2020, ***Hezron Jimson Mwankenja v Mbeya City Council,*** Misc. Land Application No. 44 of 2014 and ***Samson Kizwalo Simbila v Grace Williad William & others***, Land Revision No. 1 of 2019.

The learned counsel seems to argue that cases relied on by the learned counsel for the respondent are not applicable to the present matter. She held the view that cases of ***Mohamed Salimi*** (supra) and

Ali Chambuli (supra) were explaining *omnibus* applications in the Court of Appeal of Tanzania whereby one application can be determined by a single judge and the other by three judges. Reinforcing her argument that the Court of Appeal held so, she referred me to the decision of ***OTTU on behalf of P.L. Asenga & 106 others & 3 others v AMI (Tanzania) Ltd,*** Civil Application No. 20 of 2014 (unreported).

Having submitted as above, the learned counsel prayed the preliminary objection to be overruled with costs and allow the application to be heard to avoid multiplicity of applications in court.

Having dispassionately subjected the learned counsel's arguments to a great consideration, I agree with both parties that there is no law that bars combination of more than one prayer in the chamber summons. See the case of ***Msafir Said Omary*** (supra), ***Pride Tanzania Ltd*** (supra) and ***Meet Singh Bhachu*** (supra). To hummer his point home, Mr. Shitambala relied on the case of ***Mohamed Salimin*** (supra) ***and Ali Chamani*** (supra) to hold the view that omnibus applications are untenable. Ms. Sekulu on the other side is very sober that cases relied upon by the respondent's counsel are distinguishable because they were dealing with application of *omnibus*

before the Court of Appeal before a single judge and three judges which is not the case here.

Fortunately, this is not a new invention. It is not uncommon in our jurisdiction for applicants to file *omnibus* applications and courts have been allowing such applicants to have days in courts. The High Court has stood firm on this. Mwambegele J. (as he then was) gave an articulate explanation in the case of ***Pride Tanzania Limited*** (supra) that *omnibus* applications refused by the Court of Appeal are distinguishable from omnibus applications filed and accepted in the High Court because of two reasons. First, applications in the High court are not taken under the Court of Appeal Rules, 2009 and secondly, applications refused by the Court of Appeal were found to be omnibus and consequently struck out because they combined two or more applications which were unrelated.

I have occasioned to read thoroughly well ***Mohamed Salimin*** (supra) ***and Ali Chamani*** (supra) cases cited and supplied to me by Mr. Shitambala. Persuaded by the decision in ***Pride Tanzania Limited*** (supra), these cases are distinguishable from the application at hand. In particular in the case of ***Ali Chami***, the Court of Appeal Tanzania (Mkuye JA) struck out the application because the Court of Appeal Rules did not provide for *omnibus* application. The learned Justice of appeal

stated adding that the position of law demanded the applicant to file separate applications instead of lumping all of them together. At this juncture I am prepared to agree with Ms. Sekule that the position of law in the Court of Appeal is different from that of the High Court on the reason that the High Court has no law regulating the omnibus applications. Nevertheless, the Court of Appeal and High court have similar position on the scenario where the applicant lumps several prayers in one application which are not interrelated or interlinked. On that stance the court has no option than striking out such applications.

In our instant application, the applicant has combined two applications in one as reflected above. Literally the two prayers are related. Thus, I subscribe fully to the holding in the case of ***MIC Tanzania Limited v Minister for Labour and Youths Development***, Civil Appeal No. 103 of 2004 (unreported) which goes thus:

> *"In my opinion the combination of the two applications is not bad at law. I know of no law that forbids such course. Courts of law abhor multiplicity of proceedings. Courts of law encourage the opposite."*

I, think, the course taken by the applicant is, in view of ***MIC Tanzania*** case, quite in order. The rationale is not far to grasp. It is

fetched in the case of ***Pride Tanzania Ltd*** in which it was observed that:

> *"In the circumstances in Tanzania where the vision of the judiciary is to administer justice effectively, efficiently and timely, it will be not be inappropriate for courts of law to encourage multiplicity of proceedings because this course would defeat the very goal of which the vision is intended to achieve."*

This said, I wish to join other High Court Judges in cases of ***Msafiri Said Omari*** (supra) ***Pride Tanzania Ltd*** (supra) ***Meet Singh Bhachu (supra) Hezron Jimson Mwankenja*** (supra) and ***Samson Kizwalo Simbila*** (supra) to hold the view that *omnibus* applications are not bad in law provided that prayers therein are interrelated or interlinked. In his submission, Mr. Mushokorwa supports this position.

Before I can safely land, I find apposite to quote the observation of Dr. Ndika, J. (as he then was) in **Gervas Nwakafwila & 5 others v the Registered Trustees of Moravian Church in Southern Tanganyika**, Land Case No. 12 of 2013 (unreported) quoted in the case of ***Pride Tanzania Ltd*** (supra), wherein in both cases a similar situation like the present was faced. It was held thus:

> *"I... find the reasoning in **MIC Tanzania Limited v Minister for Labour and Youths Development**, (supra) and **Knit wear Limited v Shamsu Esmail** (supra) highly*

persuasive. Compilation of several separate but interlinked and interdependent prayers into one chamber application, indeed, prevents multiplicity of proceedings. A combined application can still be supported by a single affidavit, which must, then, provide all necessary facts that will provide justification for granting each and every prayer in the chamber summons. The fear that a single affidavit cannot legally and properly support more than one prayer is over top. On balance, an affidavit is not mystical or magical creature that cannot be crafted to fit the circumstances of a particular case. It is just a vessel through which evidence is presented in court.

I must hasten to say, however, that I am aware of the possibility of an application being defeated for being omnibus especially where it contains prayers which are not interlinked or interdependent. I think, where combined prayers are apparently incompatible or discordant, the omnibus application may inevitably be rendered irregular and incompetent."

To cum it all, in view of the cited cases of **MIC Tanzania** (supra) and ***Gervas Mwakafwila*** (supra) which are good authorities from which we can draw inspiration, I wish to restate that while applications with incompatible prayers are liable to be referred to as *omnibus* and consequently struck out for being incompetent, applications comprising two or more prayers which are interrelated or interlinked are permissible at law. The instant application is one of the applications whose prayers

are compatible. Thus, it has spectacularly passed a test of being heard on merits.

In the final analysis, I overrule the point preliminary objection. Costs to be in the due course.

It is accordingly ordered.

DATED at **MBEYA** this **12th** day of **November, 2021**

J. M. KARAYEMAHA
JUDGE