IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MWANZA SUB-REGISTRY)

AT MWANZA

LAND REVISION NO. 10 OF 2021

(Arising from Land Appeal No. 01 of 2013 in the District Land and Housing & Tribunal at Mwanza and Land Case No. 17/2012 at Mwamanyili Ward Tribunal)

BUHINU NG'WAJE.....APPLICANT

VERSUS

1. KEPHULENI LUBIMBI
2. ELIAS CHARLES **.....RESPONDENTS**

RULING

22nd April & 14th June, 2022

DYANSOBERA, J.:

The applicant herein, has moved this court by way of a Chamber Summons made under section 14 (1) of the Law of Limitation Act [Cap 89 R.E 2019], section 43(1) (a) and (b) and section 43(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019] and sections 79 (1) (c) and 95 of the Civil Procedure Code [Cap 33 R.E 2019] supported by an affidavits sworn by Martin Andrew Mpumi, a clerk at the District Land and Housing Tribunal for Mwanza at Mwanza, Paul Kipeja and Buhinu Ng'waje. The applicant is seeking to be heard on the following orders:-

1. That, this Honourable Court be pleased to grant extension of time to the applicant to file an application for revision against

the decision of the Mwanza District Land and Housing Tribunal in Land Appeal No. 1 of 2013 (Hon. Masao, Chairman) dated 9th day of June, 2017

2. That this Honourable Court may be pleased to call for and examine the records of the District Land and Housing Tribunal for Mwanza in Land Appeal No. 1 of 2013 to satisfy itself as to the correctness, legality, regularity or propriety of the judgment of the Tribunal dated 9th day of June, 2017 together with all proceedings therefrom and revise them accordingly.
3. That this Honourable Court may be pleased to call for and examine the records of the District Land and Housing Tribunal for Mwanza in Land Appeal No. 1 of 2013 and make an order for a trial de novo before the Tribunal with the requisite jurisdiction so that the applicant can exercise his right to be heard.
4. Costs of this application.
5. Any other/further relief(s) that this Hon. Court may deem it just and fit to grant.

The 1st respondent has resisted the application by not only filing a counter affidavit but also filing a notice of preliminary objection praying that this application be struck out with costs. The ground upon which the applicant relies in his notice of preliminary objection is that: -

1. *The instant application is incompetent in court for being omnibus.*

At the time of hearing of the preliminary objection, Mr. Elias Hezron, learned Advocate for the 1st respondent prayed to have the preliminary objection disposed of by way of written submissions, the prayer which was not resisted by the learned Counsel for the applicant, Mr. Fundikira who was holding brief for Mr. Kipeja, learned Counsel for the applicant. This prayer was granted.

Supporting the preliminary objection, the 1st respondent through Mr. Elias R. Hezron, submitted that the application on hand contains two or more prayers which are diametrically opposed to each other and are governed by different provision of the law, time frames for applications are different. This court was urged to follow its earlier decision in the case of **Gibson Petro v. Veneranda Bachuya**, HC Civil Revision No. 10 of 2018 where the said application fell under the category of abhorrent application

called omnibus applications and was found to be incompetent and consequently struck out.

Responding to this preliminary objection, the applicant, through Mr. Paul Kipeja, learned Advocate, submitted that although the application is omnibus, the same is properly before the court as the prayers contained therein are interrelated as they follow each other and not diametrically opposing to each other. Further that the same application and prayers contained therein are all triable and grantable by this court and fall within the court's jurisdiction. The applicant made reference to various case laws in support of his argument. Such cases include: **Philemon Joseph Chacha and Others v. South African Airways (prop) Limited and others** [2002] TLR 246, **Tanzania Knitwear Ltd v. Shamsu Esmail** [1989] TLR 48 and the **Serious Microfinance Tanzania v. Athanasia Lupakisyo**, Labour Revision No. 6 of 2019, all on the authority that where there is no specific law barring combination of two applications, such applications are competent and courts abhor multiplicity of proceedings.

Continuing the submission, it was his argument that the combination of the related application in one chamber summons is in conformity with the provisions of section 3A (1), (2) and 3B (1), (a) (b) and (c) of the Civil

Procedure Code (supra), the provisions that have introduced the overriding objective and which calls for timely disposal of proceedings at a cost affordable by the respective parties. A further argument was advanced by the applicant that the overriding objective calls for just, expeditious, proportionate and affordable resolution of civil dispute, a notion enshrined under section 45 of the Land Dispute Courts Act (supra). The applicant, through her counsel, clarified on the import of the principle of overriding objective and referred this court to the case of **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil Appeal No. 55 of 2017.

It was also submitted for the applicant that the use of omnibus application is the position of the Court of Appeal. Reliance was placed on the case of **MIC Tanzania Ltd v. Minister for Labour and Youth Development and Another**, Civil Appeal No. 103 of 2004 (CAT-Dar es Salaam). The applicant urged this court to follow that decision as it is binding and is the of the highest court of the land. The applicant sought to distinguish the case of **Gibson Petro** cited by the 1st respondent in that it does not bind me.

Lastly, the applicant argued that since parties have been locking horns for about ten years ago, it is high time this court grants the application so as to settle the disputes once and for all.

I have given the matter, particularly the submissions of both learned Counsel, thoughtful considerations. I have also looked at the decisions in some of the cases referred to me and the legal provisions.

It is the contention of Counsel for the applicant in the submission that that the application is not bad at law as no law forbids such course. It is reasoned on his part that this course is aimed at averting multiplicity of unnecessary applications, wastage of time and money on avoidable applications which would have been conveniently combined provided that there is no law which bars such a course and the prayers are not diametrically opposed and that the move is in line with the principle of overriding objectives. As said above, the applicant relied on several decisions of this court and of the Court of Appeal including the case of **Tanzania Knitwear Ltd versus Shamshu Esmail** [1989] TLR, 48 which was approved by the Court of Appeal in the case of **MIC Tanzania Limited versus Minister for Labour and Youth Development and**

the Attorney General, Civil Appeal No. 103 of 2004 to which I will revert later in my ruling.

Against that argument, the 1st respondent, through her Advocate, has sought to convince this court that the application is ineffectual for containing two or more prayers which are diametrically opposed, are governed by different provisions of law and time frames and considerations to be taken into account in determining them are different.

It is true as rightly pointed out by Mr. Paul Kipeja, learned Counsel for the applicant, that the combination of two applications in one is not bad in law since the court of law abhors multiplicity of proceedings and cases abound that there is no specific law barring such application and courts abhor multiplicity of proceedings. That position, notwithstanding, I am far from being convinced that the present application is competent and legally tenable. It bears stressing that that each case is to be considered and decided in the light of its peculiar facts and circumstances. The case under consideration does not, in my opinion, fall in the category of cases the learned Counsel for the applicant has referred to me in support of the line of his argument. I will explain.

In the first place, according to the chamber summons, the applicant is seeking for grant of distinct reliefs, that is, extension of time, revision

and an order for trial *de novo*. The application has been filed under different sections of different laws, namely, section 14 (1) of the Law of Limitation Act [Cap 89 R.E 2019], section 43(1) (a) and (b) and section 43(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019] and Section 79 (1) (c) and Section 95 of the Civil Procedure Code [Cap 33 R.E 2019]. It is not clear which provision of law covers which relief. It is to be observed that although combining more than one prayer in an application is not forbidden by law, such move can only, as generally accepted, be sanctioned where the same prayers can be dealt with by the same provision of law but where the governing provisions of the law, the time frames for filing them as well as the considerations to be taken into account are different as is the case here, such application is incompetent for being omnibus.

Second, this application which craves for three orders in three distinct parts is supported by three affidavits. It is not clear which affidavit supports which part of the order the applicant is seeking. For instance, does the affidavit of Martin Andrew Mpumi, a clerk at the District Land and Housing Tribunal for Mwanza at Mwanza sworn on 16th day of November, 2021 support the prayer for revision of Land Appeal No. 01 of 2013 or an order for trial de novo? This explains the difference existing between this case and the cases cited by Mr. Kipeja.

Third, this application contravenes the law. Sub-rule (2) of rule 1 of Order XLIII of the Code mandates every application to the court under the Code to be made by a chamber summons supported by affidavit.

In the case under consideration, there is no dispute that the present application has been filed under, *inter alia*, sections 79 (1) (c) and 95 of the Code. However, there are three different supporting affidavits whose contents are diametrically opposed to each other. For instance, the affidavit of Martin Andrew Mpumi, a clerk to the District Land and Housing Tribunal is on the concerted efforts being made to find the case file. The affidavit of Buhimu Ng'waje details historical background of the matter and his concerns while the affidavit of Paul Kipeja is on his having requested for perusal of a case file before the Tribunal, failure to trace the record of the Tribunal and on information from Martin Andrew Mpumi and advice to the applicant.

Clearly, the affidavits cannot be said, with certainty, to have supported the application on the three reliefs the applicant is seeking, that is extension of time, revision and trial *de novo*.

Fourth, there is an argument by Counsel for the appellant that the combination of the related application in one chamber summons is in conformity with the provisions of Sections 3A (1), (2) and 3B (1), (a) (b)

and (c) of the Civil Procedure Code (supra) which introduced the overriding objective principle. It is true, the Parliament of the United Republic of Tanzania in 2018 enacted the Written Laws (Misc. Amendments) (No. 3) Act. No. 8 of 2018 which amended some statutes relating to civil procedure used in handling of all civil cases filed in Courts. These statutes include the Appellate Jurisdiction Act, the Civil Procedure Code, the Land Disputes Courts Act and the Magistrate's Courts Act. The Act, however, did not delete, substitute or alter the laws but left them intact. It only introduced what it called the overriding objective of all civil litigation which is stated to be *just, expeditious, proportionate and affordable resolution of civil disputes.* The said Act require all Courts, advocates and parties involved in a litigation to promote these objectives. But I should remind the parties that there is a difference between what the law demands and the practice and the Act cannot be taken to be the *panacea.*

A case in point is **SGS Societe Generale de Surveillance SA and another v. VIP Engineering & Marketing Ltd and another**, Civil Appeal No. 124 of 2017 where the Court of Appeal stressed that: -

> *'The amendment by Act No. 8 of 2018 was not meant to enable parties to circumvent the mandatory rules of the*

Court or to turn blind to the mandatory provisions of the procedural law which go to the foundation of the case'.

I subscribe to that legal position. The oxygen principle is, in the circumstances of this case, inapplicable.

With regard to the case of **MIC Tanzania Ltd versus Minister of Labour and Youth Development and Attorney General** (supra) cited by learned Counsel for the applicant, the facts in that case are different from the facts obtaining in the case under consideration.

In that case, the competence of the application was challenged by the respondents by way of preliminary objection on points, *inter alia*, that the orders being sought were misconceived and bad in law for mixing up an order for extension of time, an order for leave and stay of execution in one chamber summons. The High Court upheld this point but did not strike it out for being incompetent, instead, proceeded to determine it on merits and ruled that the applicant wrongly dismissed Gilliard Ngewe and it ordered reinstatement.

On appeal to the Court of Appeal, one of the grounds of appeal was that the High Court judge erred in law in essentially holding that the application was incompetent in so far as it combined three prayers in one chamber summons.

The Court of Appeal, after the **perusal of the chamber summons** and **its supporting affidavit** and the **respondents' counter affidavit,** was satisfied that the three prayers were properly combined in one chamber summons, that the prayers were not diametrically opposed to each other but one easily followed the other and that once extension of time was granted, then the application for leave followed.

From that scenario, it is apparent, therefore, that while in that case there was one affidavit in support of the Chamber summons, in this case, there are three different affidavits with different contents on three different contexts. As said earlier on in my ruling, it is not clear which affidavit supports which prayer. This case is, therefore, distinguishable from the case cited by learned Counsel for the applicant.

Mr. Paul Kipeja has, in his submission, unequivocally admitted that this application is omnibus. This omnibus application is not legally permissible. The Court of Appeal of Tanzania in the case of **Mohamed Salimini v. Jumanne Omary Mapesa**, Civil Application No. 103 of 2014 (unreported) observed that:

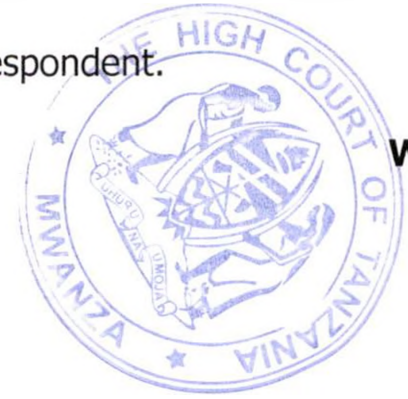
"an omnibus application renders the application incompetent and is liable to be struck out"

For the reasons stated above, I uphold the preliminary objection and find this application incompetent. I, thus, strike out.

I make no order as to costs.

W.P. Dyansobera
Judge
14.6.2022

This ruling is delivered under my hand and the seal of this Court on this 8th day of June, 2022 in the presence of all parties and in the presence of Ms. Eileen Mwakatobe, learned Advocate holding brief for Mr. Paul Kipeja, learned for the applicant and Mr. Elias Hezron, learned Counsel for the respondent.



W.P. Dyansobera
Judge