

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

APPLICATION FOR REVISION NO. 3 OF 2021

CONSTANTINO NZUMI APPELLANT

VERSUS

CRDB BANK LTD 1st RESPONDENT

MORIS MBILINYI 2nd RESPONDENT

HAIBE MOHAMED ABDALA 3rd RESPONDENT

SALUM S. AMOUR 4th RESPONDENT

(Application for revision from the Ruling and Drawn Order of the District Court of
Sumbawanga at Sumbawanga),

(M. S. Kasonde, RM)

Dated 12th Day of August, 2020

In

Application for Execution No. 2 of 2018

RULING

Date: 08/07 & 18/08/2022

NKWABI, J.:

In the application for execution lodged by Costantino Nzumi and Therezia Nzumi, the District Court ruled inter alia that:

*"By institution of a notice of appeal to the Court of Appeal
this court is deprived of its power to proceed with this
application for execution of a decree. The court ceases to
have jurisdiction to entertain this application for execution."*

Later on, the applicant through the services of Mr. Mathias Budodi, learned advocate, filed in this Court this application praying for:

1. Extension of time within which the applicant may move this honourable Court for an application for revision.
2. That upon granting extension, this honourable Court may be pleased to call for and revise the record for the proceedings in application for execution No. 2 of 2018 Sumbawanga District Court by honourable M.S. Kasonde, RM and satisfy itself on the legality and appropriateness of the respective ruling dated 12.08.2020.
3. Costs of this application.
4. Any other order this Court may deem fit and just to grant.

The application faces a preliminary point of objection raised by the counsel for the respondents as follows:

1. That, the application is incompetent and untenable for being omnibus contrary to the law.
2. That, the names of the parties in the applicant's application are quite different from those on original proceedings.

3. That, the application for revision is incurably defective for failure of the Applicant indicate where the said Application is originated from.

I ordered the parties to argue the preliminary objection by way of written submissions. Parties duly complied with the order.

While expounding the first limb of the preliminary objection, Mr. Rwekaza maintained that for two applications or omnibus application to be competent must be made under the same relevant provision of the law. He cited for that position the decision of the Court of Appeal in **Rutagatina C.L. v. The Advocates Committee & Another**, Civil Application No. 98 of 2010. Mr. Rwekaza contended in respect of this application that since this application is based on two distinct laws, which are the Law of Limitation Act for extension of time and the Civil Procedure Code for revision it is bad for being omnibus. He implored me to strike out the application for being omnibus.

In reply submission, Mr. Sanga stated that the decision in **Rutagatina's** case is meant exclusively for applications in the Court of Appeal as it was based on the Court of Appeal Rules. He backed his position by the case of

MIC Tanzania Ltd v Minister of Labour and Youth Development & Another, Civil Appeal No. 103 of 2004 (CAT) unreported in which it was stated:

"... Therefore, unless there is a specific law barring the combination of more than one prayer in one chamber summons, the court should encourage this procedure rather than swart it for fanciful reasons. We wish to emphasize, all the same that each case must be decided on the basis of its own peculiar facts."

Mr. Sanga also pointed out that the case of **Rutagatina** (supra) was distinguished in the case of **Registered Trustees of the Evangelical Assemblies of God (T) (EAGT)**, Civil Application No. 518/4 of 2017 (unreported) where it was ruled:

"... going by the reasoning which was given in the case of MIC Tanzania Limited (supra), the fact that there is no law which bars to combine two prayers in one application. I do not think it would have been prudent to prefer two distinct applications seeking for the same reliefs. The exercise would

have unnecessarily multiplied the work load to the court as well as aggravating cost to applicant.

... on the foregoing reasons, it is my finding that the contention which was advanced by the learned counsel for the respondent that the application was incompetent for being omnibus, is without founded basis and as a result, I dismiss it."

Then, Mr. Sanga urged me to follow the most recent decision by citing **Arcopar (O.M.) S.A. v. Herbert Marwa & Family & 43 Others**, Civil Appeal No. 94 of 2013 CAT (unreported):

"... on that score, agree wit Mr. Kesaria, Mr. Peter and Mr. Shayo that, where the Court is faced with conflicting decisions of its own, the better practice is to follow the more recent decisions unless it can be shown that should not be followed for any reason discussed above."

Thus, Mr. Sanga urged this court to dismiss the 1st and 3rd limbs of the preliminary objection for being unfounded and misconceived.

In rejoinder submission, Ms. Kaluse maintained that the application is still bad in law for being omnibus, as the case of **Rutagatina** laid the law even to the lower courts and that no provision of law provides for exclusion of omnibus applications but case laws. He insisted that this Court strikes out the application with costs.

I am appreciative to both counsel for their well-researched and powerful submissions in respect of the preliminary objection on the point of law that the application is incompetent for being omnibus. This point of objection shall not hold me much. This is because, the Court of appeal has already spoken and settled this point in very clear terms. In **OTTU on Behalf of P. L. Asenga & 106 others and 3 others v. AMI (Tanzania) Ltd**, Civil Application No. 20 of 2014 CAT, (unreported) the Court permitted omnibus application while stating as follows:

"In the matter presently under our consideration, having considered the three prayers which are being sought by the applicants, we are satisfied that the circumstances of the case at hand are not a hindrance to the hearing of the

omnibus prayers and, accordingly, the preliminary objection on the point is also overruled."

But in another case, the Court of Appeal ruled that the omnibus application was incompetent, that was in the case of **Mohamed Salimin v Jumanne Omary Mapesa, Civil Application No. 103/2014** (CAT) where the Court ruled:

*"There is one 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 renders the application incompetent and is liable to be struck out – See **Bibie Hamad Khalid v Mahamed Enterprises (T) Limited and Hamis Khalid Othman, Civil application No. 6 of 2011** (unreported)."*

It is thus clear as set by the above two quoted case law that omnibus application will only be permitted when the applications so combined relate to each other. But once the prayers that have been put together in one application are unrelated, the application will be held incompetent and will be struck out.

The pertinent question in this application, now, that requires my determination is whether the prayers that are in this omnibus application are related. After, I have given considerable consideration to this application, I am of the firm that the prayers that are in this omnibus application are unrelated and as correctly argued by Mr. Rwekaza they are based on different laws thus, the Law of limitation Act and the Civil Procedure Code, respectively. That is untenable because it may lead to confusion not only to the parties but also to the Court. They are unrelated for instance an application for extension of time, there is no requirement of calling for the original record, but in an application for revision, the original record has to be called. Further, a revision may reverse the judgment sought to be impugned but an application cannot. Having found as such, I rule that this application is incompetent for being omnibus as it combines unrelated prayers (applications).

Since the result of my ruling that the application is incompetent has the effect of making the application as if there is no application before this Court, then, I do not see the need to canvass the remaining limbs of the preliminary objection on points of law.

The above said, I strike out this application for being incompetent. The respondents have to have their costs.

It is so ordered.

DATED at **SUMBAWANGA** this 18th day of August, 2022.




J. F. NKWABI
JUDGE