

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**CIVIL REVISION NO. 8 OF 2022**

**SONGORO HASSAN ..... APPLICANT**

***VERSUS***

**MWAJUMA HASSAN SONGORO ..... 1<sup>ST</sup> RESPONDENT**

**MUNASAN AUCTION MART ..... 2<sup>ND</sup> RESPONDENT**

**ARDELAD EMANUEL LYAKURWA ..... 3<sup>RD</sup> RESPONDENT**

**LEGIT AUCTION MART ..... 4<sup>TH</sup> RESPONDENT**

**(Arising from Civil Revision No. 147 of 2017 of the District Court of  
Kinondoni which originated from the decision of the Primary Court  
of Manzese/Sinza in PC Probate Case No. 14 of 2010)**

**RULING**

5<sup>th</sup> and 16<sup>th</sup> August, 2022

**KISANYA, J.:**

In this application which has been brought under section 14(1) of the Law of Limitation Act, Cap. 89, R.E. 2019 (the LLA), section 30(1) (a) and (b) of the Magistrates' Courts Act, Cap. 11, R.E. 2019 (the MCA) and sections 95, 79 (a) and (c) and 68 (e) of the Civil Procedure Code, Cap. 33, R. E. 2019 (the CPC) the Court has been moved to grant the prayers and orders reproduced hereunder, in verbatim:-

- 1. THAT, this Honourable Court pleased to call record of the District Court of Kinondoni in Civil Revision No. 147 of 2017 and arising from Manzese/Sinza Primary Court's Civil Case No. 14 of 2010 with view to*

*revise and ascertain the legality and propriety, be it out of time in the exercise of jurisdictions of the said District and Primary Courts while there was already in existence of Manzese/Sinza Primary Court decision in PC Probate No. 26 of 2008 and culminating appeals thereto in Kinondoni DC Civil Appeal No. 20/2009 and High Court Civil Revision No. 77/2012, Dar es Salaam Registry.*

2. *THAT, this Honourable Court be pleased to issue an order of temporary injunction or maintaining a status quo thereat, restraining the Respondents or their agents, or assignee or licensees from making any further development on the applicant's demolished land property or any activity thereat at; or dealing in any way with the Applicants' landed property situated at Plot No. 534, Block: "B" Sinza (B) Kinondoni Municipality in Dar es Salaam City; which was purportedly sold to the 3<sup>rd</sup> respondent, or any other purported purchaser, if any than the 3<sup>rd</sup> respondent, in execution of the purported decree from PC Civil Case No. 14 of 2010, pending for hearing and determination of this Chamber Application inter parties before this Honourable Court.*
3. *Costs be provided for.*
4. *Any other relief(s) as this Honourable Court may deem fit to grant in favour of the applicant.*

Supporting the application is an affidavit affirmed by the applicant, Songoro Hassan. The application is being contested by the 1<sup>st</sup> and 3<sup>rd</sup> respondents. Alongside the counter-affidavits of the 1<sup>st</sup> and 3<sup>rd</sup> respondents, their advocate filed a notice of preliminary objection on the points of law to the effect that:-

1. The application is hopelessly time barred.
2. The decision sought to be revised is not attached.

3. The application is an omnibus application which cannot be entertained together.

When this matter was placed before me for hearing, Mr. Obadia Kajungu, learned advocate appeared for the applicant, while the 1<sup>st</sup> and 3<sup>rd</sup> respondents were represented by Mr. Living Raphael, learned advocate. On the other hand, the 2<sup>nd</sup> and 4<sup>th</sup> respondents defaulted to appear without notice.

In his submission in chief, Mr. Raphael prayed to abandon the second limb of objection. With regard to the first limb of objection, the learned counsel submitted that it was lodged out of time. Making reference to item 21, Part III of the Schedule to the LLA, he argued that the application ought to have been filed within sixty days from 25<sup>th</sup> May, 2018 when the impugned judgment was delivered. That being the case, he urged me to dismiss this application under section 3(1) of the LLA.

Arguing the remaining limb of objection, Mr. Raphael argued that the application is omnibus for containing three distinct applications for revision, extension of time and temporary injunction. He was of the firm view that the applicant ought to have been filed an application for extension of time to file revision before filing the substantive application for revision. It was his further contention that the application for temporary injunction presuppose that there is a pending suit. Citing the case of **Mohamed Suleiman vs Jumanne Omary Mapesa**, Civil Application No. 103 of 2014 (unreported), he argued that

application containing two distinct application is incompetent. He also invited me to dismiss the same.

In refutation, Mr. Kajungu submitted that the first limb of objection is devoid of merit on the account that the applicant has prayed for extension of time within which to file an application for revision. He went on to contend that section 30(1) (a) and (b) of the MCA empowers this Court to call for records of the courts below it at any time. However, he was of the view that the objection on time limitation is premature because the applicant has moved this Court to extend time within which to file revision.

Reacting on the second limb of objection, Mr. Kajungu argued that omnibus application is not barred. He further submitted that this Court has jurisdiction to determine the application for extension of time, revision and temporary injunction. It was also his further contention that all prayers arose from the same case. That being the case, the learned counsel submitted that the omnibus application is competent before the Court. To bolster his submission, he cited the case of **Global Agency Limited and 2 Others vs Rabal Rural Fund BV (RFF)**, Misc. Commercial Application No. 117 of 2019 and **Uwenacho Salum vs Moshi Ntankwa**, Misc. Civil Application No. 357 of 2021 where it was held that omnibus applications are not fatal. He was of the view that the case relied upon by the counsel for the respondents is distinguishable from the case at hand on the ground that all prayers in the present application are made by chamber summons and can be determined by

this Court. The learned counsel distinguished the case of **Mohamed Suleiman** (supra) on the contention that this Court is enjoined to determine all prayers and that all prayers are made by chamber summons.

In the light of the foregoing, Mr. Kajungu urged this Court to dismiss the objections for want of merit.

In his rejoinder, Mr. Raphael reiterated that the time within which to apply for revision is set out by the LLA. He further argued that section 30 of the MCA is applicable when revision is instituted by the court, *suo mottu*. The learned counsel went on to submit that a party who desires to file for revision is subjected to the law of limitation.

On the second limb of objection, Mr. Raphael conceded that omnibus application is allowed. However, he reiterated that the prayers at hand cannot be determined in one application on the ground that they are incompatible. He relied on the case of **Uwenacho Salum** (supra) cited by Mr. Kajungu. The learned counsel asked me to consider that the provision of section 68 of the CPC does not apply in the present matter which involves the case which originated from the primary court.

Having heard the arguments advanced by the counsel for the parties in support and against the preliminary objections, I am of the view that this Court is called upon to decide on two issues. These are, whether the application is time barred; and whether the application is incompetent for being omnibus.

Starting with the issue of time limitation, the learned counsel for the 1<sup>st</sup> and 3<sup>rd</sup> respondents is of the view that the application for revision is time barred. It is common ground the MCA does not specify the time within which to apply for revision against the decision of the District Court in the exercise of its revisionary powers from the decision and proceedings of the primary court. I, therefore, agree with Mr. Raphael's submission that guided by item 21, Part III of the Third Schedule to the LLA, an application for revision is required to be filed within 60 days from the date of impugned decision.

Although Mr. Kajungu argued that this Court is enjoined to call for record and revise the proceedings and decision of the courts below it at any time, it is vivid that the applicant is aware that the application for revision is time barred. That is why he prayed for this Court to hear and determine the application for revision out of time.

Considering that the applicant has also moved this Court seeking an order of revision out of time, I agree with Mr. Kajungu that the preliminary objection is misconceived. The law does not specify the time within which an application for extension of time should be lodged. It is for that reason that, the first limb of objection is hereby overruled.

With regard to the second issue, it is common ground that apart from praying for extension of time for revision, the applicant prays for revision of the decision of the District Court of Ilala in Civil Revision No. 147 of 2017 and

temporary injunction which arose from execution of the decree in PC Civil Case No. 14 of 2010. Therefore, I agree with the learned counsel for the parties that, this is an omnibus application.

As rightly argued by both counsel, it is settled law that, combination of more than one prayer in one chamber summons is not barred. Such practice is encouraged if it does not contravene the law and basing on the circumstances of each case. There is a plethora of authorities stating that position. One of them is the case **MIC Tanzania Ltd vs Minister for Labour and Youth Development and Another**, Civil Appeal No. 103 of 2004 which was referred to in the case of **Uwenacho Salum** (supra) where it was held as follows:-

*"... There will be a multiplicity of unnecessary applications. The parties will not find themselves wasting more money and time on avoidable application which would have been conveniently combined. The Court's time will be equally wasted in dealing with such applications. 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 thwart it for fanciful reasons. We wish to emphasise, all the same that, each case must be decided on the basis of its own peculiar facts"*

However, the law is further settled that two or more applications may be combined together if they are, interdependent, determined by the same court, made under same law and determined basing on the same factors.

However, that can only be done if the prayers sought are not opposed to each other or where the applications have different timelines and distinct considerations in their determination. See also the case of **Uwenacho Salum** (supra) in which this Court cited with approval its decision in **Gervas Mwakafwala and 5 Others vs The Registered Trustees of Moravian Church in Southern Tanganyika**, Land Case No. 12 of 2013 where it was underscored that:

*"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."*

Similar stance was stated in the case of **Rutunda Masole vs Makufuli Motors Limited**, Misc. Labour Application No. 79 of 2019, HCT at Mwanza (unreported) as follows:-

*"The condition precedent for applicability, of this rule is that the application should not be diametrically opposed to each other or preferred under different laws, complete with different timelines and distinct considerations in their determination"*

Being the foregoing position of law, I am convinced that, the present omnibus application is incompetent due the following reasons:



*First*, the law governing application for extension of time to file revision, application for revision and application for temporary injunction of the proceedings originating from the primary courts are different. As cited in the chamber summons, the application for extension of time is made under section 14 of the LLA, while the application for revision is preferred under section 30 of the MCA. On the other hand, Mr. Kajungu submitted that the application for temporary injunction is made under section 68 of the CPC. As hinted earlier, this matter originated from the primary court. It is settled position of law that the CPC does not apply in the proceedings emanating from the primary court. That being the case, this Court may be called upon to consider whether it has jurisdiction to hear and determine an application for temporary injunction in respect of execution made by the primary court and whether it was properly moved to determine the said prayer.

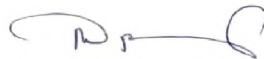
*Second*, the application for extension of time to file revision and application for revision on one hand and application for temporary injunction on the other hand are not interlinked. This is also when it is considered that each application has distinct consideration in its determination. For instance, in application for revision the Court will be called upon to consider whether the proceedings of the lower courts are tainted with illegality or impropriety. As regards, the application for temporary injunction, it is determined by considering whether the applicants has proved three conditions namely, *prima facie* case, irreparable loss and convenience are in his favour. In circumstances,

I am of the considered view that the applicant ought to have filed separate applications.

On the foresaid reasons, I respectfully agree with the learned counsel for the 1<sup>st</sup> and 3<sup>rd</sup> respondents that this omnibus application is incompetent before the Court.

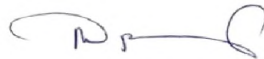
In the result, the second limb of objection is hereby sustained. The application is, accordingly, struck out for being incompetent. As the matter originates from probate cause, each party is ordered to bear its own costs.

DATED at DAR ES SALAAM this 16<sup>th</sup> day of August, 2022.



S.E. Kisanya.  
JUDGE

COURT: Ruling delivered this 16<sup>th</sup> day of August, 2022 in the presence of in the presence of Mr. Yalangai Ole Mkulago holding brief for Mr. Obadia Kajungu, learned advocate for the applicant, Mr. Living Raphael learned advocate for the 1<sup>st</sup> and 3<sup>rd</sup> respondents and in the absence of the 2<sup>nd</sup> and 4<sup>th</sup> respondents.



S.E. Kisanya  
JUDGE  
16/08/2022