IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 367 OF 2021

(Arising from the decision of High Court, De-Mello, J, in PC Civil Appeal No. 27 of 2019 dated 09/04/2020)

UWENACHO SALUM..... APPLICANT

VERSUS

MOSHI SALUM NTANKWA..... RESPONDENT

RULING

Date of last Order: 01/12/2021.

Date of Ruling: 04/02/2022.

E.E. KAKOLAKI, J

This ruling is seeking to determine the preliminary point of objection raised by the respondent against the applicant's application contending that the application being omnibus for contravening the provisions of section 5(2)(c) of the Appellate Jurisdiction Act, [Cap. 141 R.E 2019] herein to referred as AJA and Rule 10, 45(b), 45A(1) and (b); and 47 of the Tanzania Court of Appeal Rules, 2009 herein to referred as Rules. The challenged application is in two sets namely, **one**, for extension of time to apply for Certificate of

Point of Law and the **second**, for certification that a point of law is involved in the decision of this Court in PC. Civil Appeal No. 27 of 2019 handed down on 09/04/2020. The same has been preferred under sections 11(1) and 5(2)(c) of Appellate Jurisdiction Act, [Cap. 141 R.E 2019] and Rules 45(a), 46(1) and 47 of the Tanzania Court of Appeal Rules, 2009. As both parties are represented and since it is the practice of the court to dispose of first the preliminary objection, it was agreed that hearing should proceed orally. The applicant is represented by Ms. Charles Lugaila learned advocate while the respondent enjoying the good legal services of Mr. Casmir Nkuba, learned counsel.

Advancing his arguments in favour of the raised preliminary point of objection Mr. Nkuba contended that the applicant's act of combining the two application into one renders this application incurably defective for three reasons. The first one he submitted, the two applications fall under two different schemes of law and procedure as refusal of the application for extension of time filed under section 11(1) of AJA cannot be appealed against apart from preferring a second bite to the Court of Appeal under Rule 45A(1)(c) of Rules while the decision in the application for Certificate on Point of Law brought under Section 5(2)(c) of AJA is appealable under

section 5(1)(c) of AJA. He said since the two are treated differently they cannot be combined. The second reason he contended, factors or considerations for determination of the two applications do differ in that for extension of time the applicant has to account for the delay while on certification that a point of law is involved he has to establish existence of the said point of law calling for intervention of the Court of Appeal. As for the third reason he said time limitation for the applicant aggrieved with the decision of this court to challenge it to the Court of Appeal do differ as well. That, the second bite application to the Court of Appeal upon its refusal by this court has to be made within 14 days of the decision while the one made out of the application for certification on point of law its appeal process takes more than 14 days for want of Notice of Appeal and leave of this court. To support his stance on incurable defect of combining two applications Mr. Nkuba relied on the case of **Juma M. Nkondo Vs. TOL Gases Limited/Tanzania Oxygen Limited and Another**, Civil Application No. 382/01 of 2019, where the Court of Appeal held the combination of the application for extension of time to file an application for leave to appeal under Rule 10 of the Rules and the other one relating to leave to appeal to the same Court were found to be omnibus and incompetent hence struck

out. He therefore prayed the court on those reasons to find the application is omnibus and incompetent hence proceed struck it out with costs.

Mr. Lugaila on his side contended the submissions by Mr. Nkuba lack merits and therefore the same should be overruled with costs. He argued the application is properly made in terms of the position well set by the Court of Appeal in the case of **Mic Tanzania Limited Vs. Minister for Labour and Youth Development**, Civil Appeal No. 103 of 2004 (CAT-unreported), where the Court held that omnibus application can be made in some instances. He argued Mr. Nkuba has failed to substantiate his claim for providing the provision of the law that bars the combination of prayers which are before this court. On the cited case of **Juma M. Nkondo** (supra) by Mr. Nkuba he stated its facts are far different from the ones in the present matter as that case dealt with matters which were before the Court of Appeal while in this matter the application/prayers are made before the High court. That he would agree with the applicability of that position if the present application was before the Court of Appeal. He contended the two prayers in this application will not be entertained concurrently but rather one after another as entertainment of the second depends on the grant of the first prayer for extension of time. As for the factors for determination he said the

two application require two different account in which in this matter the grounds have been stated in paragraphs 15 and 16 of the affidavit support both applications respectively. It was his humble submission therefore that the application is properly before the court. In his rejoinder submission Mr. Nkuba attacked the application of the case of **Mic Tanzania Limited** (supra) in the present matter submitting that it was decided long before adoption of the new Rules of 2009 as there in a new rule 45A now providing for second bite option for application for extension of time to file the Notice of Appeal, applications for leave to appeal and Certification on point of law, to the Court of Appeal where the first one has been denied by the High Court, which was not the position when that case was decided. With regard to law that bars omnibus application he replied it is the decision in **Juma M. Nkondo** (supra) which whose facts are not distinguishable from the facts of this case since the interpreted law is the same. On the issue of factors to be considered he reiterated his earlier submissions and in summing up prayed this court to find the application is incompetent hence struck it out with costs for failure of the applicant to separate the two different prayers.

I have carefully paid a close follow up of the submissions by both learned counsels as well as perusing the relevant pleadings. What is not disputed is

the fact that in this application there are two different prayers forming omnibus application as alluded to herein above. Now the issue for determination before this court is whether the omnibus application is incurably defective for contriving the law as alleged by Mr. Nkuba. It is Mr. Nkuba's assertion that omnibus application is prohibited by the law while Mr. Lugaila is of the different view in that it is allowed under the law. In these two sets of submissions I embrace Mr. Lugaila's submission. The position of the law in our jurisdiction is that combination of more than one prayer in the chamber summons should be encouraged rather than thwart it for fanciful reasons as there in no law barring the same. This position was taken by this Court in the case of **Tanzania Knitwear Ltd Vs. Shamshu** (1989) TLR 48 (HC) where Mapigano, J (as he then was) had the following observation to make:

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

From the above cited case which I fully subscribe to it is clear to me now that it is the spirit of this court that such prayers should be encouraged in as

long as they do not contravene any substantive or procedure law bearing in mind that each case has to be decided basing on its own facts. The reasons for courts to allow and encourage such practice is not far-fetched as it assist parties to avoid multiplicity of proceedings and serve both parties and court's time. Similar reasons were adumbrated in the case of **Mic Tanzania Limited** (supra) where the Court of Appeal when discussing consequences that might follow if such practice is discouraged adopted the position of this court in **Tanzania Knitwear Ltd** (supra) and opined that:

> *"…There will be a multiplicity of unnecessary applications. The parties will find themselves wasting more money and time on avoidable applications which would have been conveniently combined. The Court's time will be equally wasted in dealing with such applications.* ***Therefore unless there is specific law barring the combination of more than one prayer in one Chamber summons, the Courts should encourage this procedure rather than thwart it for fanciful reasons. We wish to emphasize, all that same, that each case must be decided on the basis of its own peculiar facts****." (Emphasis added)*

As the law requires also each case to be decided basing on its own peculiar fact the next question is what factors should be considered when determining whether the combined prayers in a single applications are competently done or not. In my considered opinion, it should be when the said prayers are interlinked or interdependent, and I would add when the same can be entertained by the same court as when it is otherwise then the omnibus application is rendered irregular and incompetent. This court in the case of **Gervas Mwakafwala & 5 Others Vs. The Registered Trustees of Morovian Church in Southern Tanganyika**, Land Case No. 12 of 2013 (HC-unreported) when faced with similar situation to the present one had the following views:

> *"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 be inevitably be rendered irregular and incompetent****." (Emphasis supplied)*

In the present matter it is true as submitted by Mr. Nkuba the two prayers are premised on two different provisions of the law. I however differ with his

proposition that, difference on their treatment/procedure when the applicant is discontented with the decision as well as the factors for consideration when determining the two prayers and the time limitation for dealing or challenging the decision of this court when one is dissatisfied with, in my consideration opinion do not render the application incompetent. It would so do if this court had no jurisdiction to entertain one of them or when the two are not interlinked or interdependent as held in the case of **Gervas Mwakafwala & 5 Others** (supra). In this application the prayers for extension of time within which to file an application for certificate that a point of law is involved and for certification of point of law are interlinked and interdependent. I say so as the first application has to be considered first and be granted before the second one is entertained. And the second one cannot be entertained before the first one is determined thus the two are interlinked. Further to that this court has jurisdiction to entertain both application unlike what was the case in **Juma M. Nkondo** (supra) where the jurisdiction for entertainment of the application for extension of time was before the single justice of Appeal whereas the one for leave to appeal was to be entertained by three judges, hence the holding that it was incompetent for being omnibus. I therefore agree with Mr. Lugaila that the said case is

not applicable to the facts of this case. Since the two prayers in this application are interdependent and interlinked I am satisfied and therefore make a finding that the same is properly before the court.

In the premises and for the fore stated reasons I am satisfied that the preliminary point of objection raised by the respondent is devoid of merits and proceed to dismiss it as I hereby do. The application is to proceed with hearing on merits.

I order each party to bear its own costs.

It is so ordered.

DATED at DAR ES SALAAM this 04th day of February, 2022.

E. E. KAKOLAKI

JUDGE

04/02/2022.

The Ruling has been delivered at Dar es Salaam today on 04th day of February, 2022 in the presence of the Mr. Paschal Kihamba holding brief for Mr. Charles Lugaila, advocate for the applicant, Mr. Shiza A. John, advocate for the Respondent and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.

E. E. KAKOLAKI
JUDGE
04/02/2022