

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DISTRICT REGISTRY OF MOSHI**

**AT MOSHI**

**CIVIL REFERENCE APPLICATION NO. 03 OF 2022**

(Arising from proceedings and orders in Misc. Civil Application No. 3 of 2022, before

Hon. O. H. Kingwele, DR)

**THE MOSHI HOTEL 2010 LIMITED.....APPLICANT**

**VERSUS**

**SALIM JUMA MUSHI T/A DEXTER ATTORNEYS..... RESPONDENT**

*06/09/2022 & 11/10/2022*

**RULING**

**MWENEMPAZI, J.**

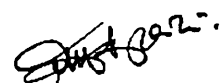
The applicant brought this application by way of chamber summons made under Rule 8(1) and 7(1) of The Advocates Remuneration Order, 2015, G.N 263 of 2015, and section 95 of The Civil Procedure Code (Cap. 33 R.E 2019) seeking for extension of time to file reference application; to declare purported remuneration agreement entered between the applicant and respondent illegal, void and fraudulently procured and therefore unenforceable; to interfere with and correct the findings of Hon.

*[Signature]*

Deputy Registrar dated 14<sup>th</sup> February 2022 for they were procured illegally; to examine, revise, quash and set aside the proceedings and resultant order of Hon. Deputy Registrar in Misc. Application No. 03 of 2022 as the proceedings and orders are tainted with gross illegality and procedural irregularities which occasion a failure of justice; to interpret point of law to wit whether the agreement for enforcement of application for remuneration ought to be certified and all other accompanying annexure and costs of this application.

The application was served to the respondent who filed their counter affidavit together with notice of preliminary objection on point of law which states that:-

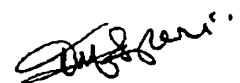
- 1. The Honourable Court lack requisite jurisdiction to entertain and determine that were not raised, argued and entertained by the Honourable Deputy Registrar. In the alternative but without prejudice to the above,*
- 2. The by clear implication out of chamber summons is supported by the application which is fatally defective and thus unmaintainable for combining three applications in one to wit, extension of time to file reference, application to set aside and application for reference itself.*



- 3. The current application is misconceived, misplaced and premature for want of exhaust the other remedies available viz uplifting and setting aside the order made.*
- 4. That the affidavit is incurably defective for containing, prayers, arguments and conclusions.*
- 5. That the application is defective from the outset for failure to attach board resolution authorizing the filing of this application.*

Therefore, this ruling is for the above preliminary objection. At the hearing Mr. Melchizedeck Paul Hekima, Advocate appeared for the applicant while the respondent had the service of Ms. Juliana Mushi, Advocate who was holding brief for Mr. Ngereka Eliamini Miraji, Advocate for the respondent. The preliminary objections were agreed by both parties to be disposed of by way of written submissions.

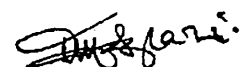
In his written submission in support of the preliminary objections, Mr. Ngereka E. Miraji started by quoting the provisions cited in the chamber summons and the prayers sought and submitted that since the applicant failed to file the application for reference within the time prescribed by the law then he was supposed to file an application for extension of time if at all has sufficient ground to warrant the court to exercise its discretion and if the court finds there is the sufficient cause will then grant the



applicant more time to file an application for reference. However, the applicant decided to file this application which contains cocktail prayers to wit extension of time to file reference, application to set aside an application for reference itself. He submitted that filling the application with different prayers which are not related is highly discouraging and that alone makes the application incompetent under the eyes of the law. In support of his submission, he cited the case of **Rutagatina C.L vs. The Advocate Committee and Clavery Mtindo Ngalapa, Civil Application No. 98 of 2010 CAT at Dar es Salaam registry** on page 5 where it was stated that:-

*"Since the application are provided for under different provisions it is clear that both cannot be "lumped" up together in one application as is the case here".*

The counsel also cited the case of **Nurdin Mohamed Chingo vs. Salum Said Mtiwe and Hadija Said Mtiwe, Misc. Civil Application No. 29 of 2021** and submitted that the application before this court is incompetent and unmaintainable for combining more than three prayers which is unrelated but also from different laws as stated above. He prays for the application to be dismissed in its entirety with costs.

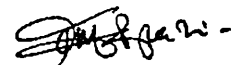


In response, Mr. Melchizedek Paul Hekima gave a brief history of the gist of this application and submitted that the applicant filed this application as a second bite after the rejection of his application before the Deputy Registrar. The applicant is seeking for extension of time and reference. He submitted that the law does not bar omnibus application once prayers involve the court of the same jurisdiction and are not diametrically opposed to each other. He submitted that the two cases cited by the respondent's counsel do not apply in this scenario. He said the two cases concern notice of appeal and leave to appeal to file the appeal in the Court of Appeal which in an actual sense they are not related. He submitted that leave to file an appeal out of time is filed in High Court under Court of Appeal Rules and Notice is filed in Court of Appeal under the Appellate Jurisdiction Act hence involving two different Courts, different laws, two different prayers diametrically opposing each other, thus the position is quite different from this case. He contended that the case before the court is the application for extension of time to file reference and reference which was actually filed in the same High Court which is not bad in law since the prayers are related one follows the other. The counsel submitted that the respondent's counsel should realize that the preliminary objection must be detailed and the court is not moot for him to test his competence. He referred the case of **James Burchard**

**Rugemalira vs. Republic and Mr. Harbinder Singh Sethi, Criminal Application No. 59 of 2017 CAT at Dar es Salaam registry** (unreported) and **Maro Machange vs. Augustino Katikiro and Kondoa Auction Mart and Court Broker, Civil Appeal No. 18 of 2019 HC Dodoma registry** (unreported). The counsel further insisted that for the objection to stand it should be a pure point of law and not to be ascertained from facts. He submitted that the objection raised by the respondent demand further evidence to prove as they were based on a matter of evidence rather than a point of law. He maintained that the combination of two applications is not bad in law. In support, he cited the case of **MIC Tanzania Ltd vs. Minister for Labour and Youth Development and A.G, Civil Appeal No. 103 of 2004, CAT at Dar es Salaam registry** (unreported) at page 8 while referring to the case of **Tanzania Knit Wear Ltd vs. Shamshu Esmail (1989) TLR 48** where it was stated that:

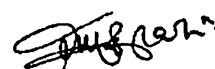
*"In my opinion the combination of the two applications is not bad in law, I know of no law that forbids such a course. Courts of law abhor multiplicity of proceedings. Courts of law encourage the opposite".*

The counsel cited also the case of **William Getari Kegere vs. Equity Bank and Ultimate Auction Mart, Civil Application No. 24/08 of**



**2019 CAT at Mwanza registry** (unreported) where the court granted the application for an extension of time to file a notice of appeal, leave to appeal to CAT and apply for certified copies of proceedings, judgment, and decree in appeal out of time. He prayed for the preliminary objection to be dismissed with costs.

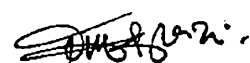
In rejoinder, the counsel for the respondent submitted that their objection arose from the applicant's pleading only and no factual or evidential material is required. He submitted that the case of **MIC Tanzania Ltd** (supra) was read in a rush by the respondent's counsel. He submitted that the first prayer in chamber summons is an extension of time which is governed by the law of the Limitation Act and the affidavit must contain reasons for the delay. On the second prayer, they seek for a declaration that the agreement entered between the applicant and respondent was illegal, void, fraudulently procured, and therefore unenforceable. He submitted that this kind of application is made under the Advocates' Remuneration Order and the ground to be laid is the existence of exceptional circumstances necessitating interference with the decision of the Taxing Master and submitted that the affidavit in support did not include these grounds. He further submitted that prayer number four is a prayer for revision and not reference. The counsel went on and



submitted that while revision and extension of time one can adduce evidence not tendered in previous proceedings, that is not the case in reference, one cannot swear one affidavit nor conveniently have one application for reference and extension of time.

The counsel submitted that the cited and referred cases by the applicant's counsel are distinguishable and not even relevant to the case at hand because in those cases the prayers combined related to each other contrary to the application at hand. He reiterated his submission in chief and prayed for the dismissal of the application with costs.

I have taken into consideration the application as well as the rival written submissions of the learned counsels. Though the respondent's counsel raised five preliminary points of objection, he only argued one point and abandoned the others. Therefore, the objection is centered on whether the application is omnibus and if so what is the remedy. The chamber summons filed in this court by the applicant contained five prayers that to me it amounts to omnibus in the eye of the law. Now the issue is whether fatal. it is a trite law that omnibus application is not bad in law and no law prohibits multiplicity of prayers in one application. This is the position in the case of **MIC Tanzania Ltd** (supra) where the Court stated that:-





*"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".*

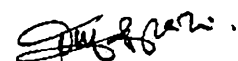
Also in the case of **First Assurance Co Ltd vs Aron Kaseke Mwasonzwe and 2 Others (Civil Revision 1 of 2020) [2021] TZHC 7105 (12 November 2021)**; quoted the observation of Dr. Ndika, J. (as he then was) in **Gervas Nwakafwila & 5 others v the Registered Trustees of Moravian Church in Southern Tanganyika, Land Case No. 12 of 2013 (unreported) quoted in the case of Pride Tanzania Ltd (supra)**, wherein in both cases they were faced with similar situation and it was stated that:-

*"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 7 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."*

Therefore, the law is settled. Now what is required is for the prayers to be interrelated or interlinking. This is also the position in the case of **Juliana Armstrong Jerry vs International Commercial Bank of Tanzania & 2 others (Misc. Land Case Application 30 of 2022) [2022] TZHCLandD 178 (31 March 2022)** where it was stated that:-

*"It is a common understanding that two or more independent matters cannot go together in one application, unless they are interrelated and can conveniently be jointly determined by the court. (See the cases of Geoffrey Shoo & another vs. Stella Shoo, Misc. Land Application No. 109 of 2020, High Court Land Division, Dar es Salaam (unreported) & Daudi Lengiyu vs. Dr. David E. Shungu, Civil*



*Application No. 28 of 2015 (unreported) and other numerous authorities on the similar position)."*

Back to the chamber summons, the first prayer of extension of time is made under Rule 8(1) of the Advocates Remuneration Order 2015, and under the same order in Rule 7(1) the applicant is seeking for declaration of the purported remuneration agreement be illegal, void and fraudulent procured; call upon the Court to interfere with the findings of Deputy Registrar by examining, revise, quash and set aside the proceedings and resultant orders which tainted with gross illegality and lastly to interpret the point of law wit whether the agreement for enforcement of application for remuneration ought to be certified and all other accompanying annexures. In my view from prayer two to five are all interrelated as they both fall within the jurisdiction of this court when the matter is brought for reference. The applicant is challenging the decision of the Taxing Master which falls within the ambit of Rule 7 of the Order. All prayers were made under the same order and I see no effect on that.

The matter could have been different if they were made under a different law. The contention by the respondent's counsel that the first prayer governed by The Law of Limitation Act is baseless. That law does not apply in the situation at hand where there is a specific provision. Thus,

the applicable law is The Advocate Remunerations Order which clearly stated what to be done when a party is aggrieved by the decision of the Taxing Master and what should be done if a party finds himself out of time. Also, the counsel misled himself by asking this court to go deep into the applicant's affidavit to find a reason for the delay and other alleged illegality. This is prematurely raised at this stage because I am here just to determine the objection raised and not the merit of the application. So whether there was no reason for the delay or not the same will be dealt with during the hearing of the application.

In the result of the foregoing, I find no merit in the respondent's preliminary objection, and the same is accordingly overruled with cost to the applicant.



**T. M. MWENEMPAZI**

**JUDGE**

**11/10/2022**