

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(BUKOB A DISTRICT REGISTRY)

AT BUKOBA

MISC. LAND CASE APPLICATION NO. 02 OF 2022

JOSEPH MWEMEZI BAKUZA.....APPLICANT

VERSUS

WINIFRIDA MUKONO1ST RESPONDENT

LEONARD MUJAKI.....2ND RESPONDENT

RULING

Date of Last Order: 01/03/2022.

Date of Ruling: 01/03/2022.

A.E. MWIPOPO, J.

The Respondents herein namely Winifrida Mukono and Leonard Mujaki filed Notice of the Preliminary Objection (P.O.) on 3rd February, 2022, containing two points of law. The said points of Law raised by the Respondents are as follows hereunder:--

- 1. This Application is misconceived and was wrongly filed in Court that has no jurisdiction to determine proceedings which were already declared time barred by the Court of Appeal of Tanzania.*

2. This application is rendered incompetent and unmaintainable for being omnibus application contrary to the law.

When the case was coming for hearing of the P.O.'s, the applicant was represented by Mr. Aaron Kabunga, Advocate, whereas respondents were represented by Mr. Joseph Bitakwate.

The Counsel for the respondent's prayed to abandon point No. 1 of the P.O. and submitted on point No. 2 only. He said that this application which is made by chamber summons supported by the affidavit, contain omnibus applications in the chamber summons which does not go together. He said the chamber summons contains three prayers, the first prayer being for an order for extension of time to file Notice of Intention to Appeal to the Court of Appeal against the decision of this Court in Land Appeal Case No. 13 of 2013. He said that the second prayer is for extension of time within which the applicant can apply for leave to appeal to the Court of Appeal to the impugned decision; and the third prayer is prayer to be granted leave to appeal to the Court of Appeal against the decision in Land Case Appeal No. 13 of 2013 delivered on 10th November, 2015.

The counsel was of the view that the first two prayers for extension of time to file Notice of Appeal and leave of appeal are not omnibus prayers which goes together. For that reason, the first two prayers may be granted in the same application. But, the third prayer for leave to appeal to the Court of Appeal does not go together with the first two prayers and the applicant was supposed to file

another independent application for the leave to appeal to the Court of appeal. To support his argument, the counsel cited the case of **Geofrey Shoo and Another V. Mohamed Said Kitumbi and Two Others**, Misc. Land Case Application No. 109 of 2020, High Court Land Division at Dar Es Salaam, (Unreported), which held that the application for extension of time and application for leave does not go together; and case of the Court of Appeal in **Ali Chamani V. Karagwe District Council and Another**, Civil Application No. 411/4 of 2017, Court of Appeal of Tanzania, at Bukoba.

In response, the counsel for the applicant said that omnibus application are allowed. The prayer of the applicant made in the Chamber Summons are in the domain of this Court. Thus, the Court has jurisdiction to determine it. He distinguished the cited case of **Geofrey Shoo and Another V. Mohamed Said Kitumbi and Two Others**, (Supra), that the prayers of the applicant in the cited case were in domain of High Court and Court of Appeal which is two different dominion.

The counsel also distinguished the cited case of **Ali Chamani V. Karagwe District Council and Another**, (Supra), that the application was declared omnibus for the reason that some of the prayers were in the domain of single Justice of Appeal and others were in the domain of the full bench of three Justices

of Appeal. That in some application the applicant was praying for leave to appeal to the Court of Appeal which is the domain of the High Court.

The counsel for applicant said that the prayer in the present application are related as they are provided under sections 5 (1) and 11 (1) of the Appellate Jurisdiction Act, Cap. 141, R.E. 2019. In absence of any provision of the law barring combination of application, the Court is encouraged to entertain those combined applications. The counsel cited in support of the submission the case of **The Registered Trustees of the Evangelical Assemblies of God (T) (EAGT) V. Rev. Dr. John Mahene**, Civil Application No. 518/4 of 2017, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported); and the case of **James Buchard Rugemarila V. Republic and Another**, Criminal Appeal No. 59/19 of 20017, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported).

The counsel for the applicant said in case the Court find that the application contain omnibus prayers, he pleaded for the Court to overlook the prayer which does not relate to other prayers and proceed to determine the remaining prayers. The counsel invited the Court to develop the law in this circumstances in order to expedite the proceedings in Court. He added that the circumstances in this case are peculiar and the Court has to determine it in its own circumstances.

In his rejoinder, the Counsel for the respondent said that section 5 and 11 of the Appellate Jurisdiction Act does not apply to the land cases and the applicable

law is section 47 (2) of the Land Disputes Courts Act. The decision of the Court of Appeal in the cited case of **The Registered Trustees of the Evangelical Assemblies of God (T) (EAGT) V. Rev. Dr. John Mahene**, (Supra), is that it was not prudent to prefer two distinct application together. He also said that the prayer to amend the Chamber Summons to rectify the error is overtaken by the event as the P.O. has already been argued and the Court has to make ruling on the issue.

As it was submitted by both counsels, there is no law which bars the combination of more than one prayer in one chamber summons. In the case of **MIC Tanzania Ltd v. Minister of Labour and Youth Development and Another, Civil Appeal No 103 of 2004, the Court of Appeal, at Dar Es Salaam, (Unreported)**, the Court of Appeal was of the opinion that parties should be encouraged to adopt the procedure of combining prayers in chamber summons especially where prayers made were not diametrically opposed to each other such as where extension of time is granted, then application for leave follows.

The same position was stated by the Court of Appeal in the cited case of **The Registered Trustees of the Evangelical Assemblies of God (T) (EAGT) V. Rev. Dr. John Mahene**, (Supra), where it held at page 7 – 8 of its ruling that:-

"...the facts 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

application seeking for the same relief. The exercise would have unnecessarily multiplied the work load to the Court as well as aggravating costs for the applicant.”

However, where the omnibus applications are not interrelated they render the application to be incompetent. This was held by the Court of Appeal in **Rugatina C.L V. the Advocates Committee and Another**, Civil Application No 98 of 2010, Court of Appeal of Tanzania, at Dar Es Salaama, (Unreported), which decided that, two distinct prayers combined in one omnibus application renders the application to be incompetent. In this case, the Court of appeal discourages the filing of omnibus applications which lumped up together applications which are based on the different provisions of the law, which their determinations requires different consideration to be taken and applications where their jurisdiction is different.

The test which was provided by this Court in the case of **Geoffrey Shoo and Another V. Mohamed Said Kitumbi and Two Others**, (Supra), for the omnibus application to stand is the facts that prayers so stated in the Chamber Summons are interrelated and capable of being jointly determined.

As it was submitted by both counsels, the present application contain three omnibus prayers. The first prayer is for extension of time to file Notice of Appeal to the Court of Appeal against the decision of this Court in Land Appeal Case No. 13 of 2013; the second prayer is for extension of time within which the applicant

can apply for leave to appeal to the Court of Appeal to the impugned decision; and the third prayer is prayer to be granted leave to appeal to the Court of Appeal against the decision in Land Case Appeal No. 13 of 2013 delivered on 10th November, 2015.

The first two prayers In the Chamber Summons are for extension of time and the third prayer is for leave to appeal to the Court of appeal. These first two prayers are related as they are made from the same law governing extension of time which is section 11 (1) of the Appellate Jurisdiction Act, Cap. 141, R.E. 2019. The third prayer in the Chamber Summons which is application for leave to appeal to the Court of appeal is provided under different law. It is provided under section 47 (2) of the Land Disputes Courts Act, Cap 216, R.E. 2019.

The prayers in the application requires different consideration in their determinations. In the application for extension time, the applicant aims to be allowed to pursue his intended course out of time. In the application for leave to appeal to the Court of Appeal of Tanzania, the law aim to spare the Court the spectre of unmeriting matters and to enable it to give adequate attention to cases of true public importance as it was stated in **British Broadcasting Corporation v Eric Sikujua Ng'maryo**, Civil Application No. 133 of 2004, (unreported). An application for leave is usually granted if there is good reason, normally on a point of law or on a point of public importance that calls for this Court's intervention. Indeed, on the aspect of leave to appeal is grantable where the proposed appeal

stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal. This was said by the Court of Appeal in **Rugatina C.L V. the Advocates Committee and Another**, (Supra).

Normally, an application for extension of time comes first and the application for leave follows. Application for leave has its own requirement including the proof that the applicant has already file the Notice of Appeal. It is important to separate the two prayers in order to allow the court and the parties to have focus on the specific issues that need to be determined. In **Mohamed Salimin v. Jumanne Omary Mapesa**, Civil Application No.103 of 2014, Court of Appeal of Tanzania, at Dodoma, (unreported), the Court of Appeal decided that combining the two independent prayers in one chamber summons affects the competence of the whole application.

The counsel for the applicant prayed for the Court to overlook the distinct prayer and proceed with the interrelated one, however since the application is not competent the same could not be served. Also, the timing of the prayer is misconceived.

Therefore, I find that the P.O. raised by the Respondent has merits. I proceed to struck out the application with Cost.



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A.E. Mwipopo

Judge

01.03.2022

The Ruling was delivered today, this 01.03.2022 in chamber under the seal of this court in the presence of the Applicant, 1st Respondent, and counsel for the Respondents who also hold brief for the counsel for the Applicant. Right of appeal explained.



A handwritten signature in blue ink, appearing to be 'A.E. Mwipopo', written over a horizontal line.

A. E. Mwipopo

Judge

01.03.2022