

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 589 OF 2021**

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

**DR. SALUM ALI CHAMBUSO..... APPLICANT**

**VERSUS**

**PAUL ELIAS MARO.....1<sup>ST</sup> RESPONDENT**

**ALI SALUM HOTI @ ALI KUKU.....2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 08/12/2022.*

*Date of Ruling: 10/02/2023.*

**E.E. KAKOLAKI, J**

This ruling is seeking to address the issue raised by the Court suo motu inviting parties to address it on whether the application is competent for containing omnibus prayers. The applicant herein under the provisions of section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R.E 2019] herein to referred as AJA, section 14(1) of the Law of Limitation Act,[ Cap. 89 R.E 2019] and any other enabling provisions of the law in force for the time

being preferred this application praying for three orders. **one**, extension of time to file a notice of appeal against the decision of this Court made on 28/02/2007 (Mihayo,J as he then was), **second**, extension of time to file an application for leave to appeal to the Court of Appeal and **third**, for extension of time to apply by letter to be issues by all certified copies of Judgment made by Mihayo, J (as he then was) on 28/02/2007 and decree on appeal and proceedings out of time. The application is supported by the applicant's affidavit.

When served with the chamber summons the 1<sup>st</sup> respondent vehemently resisted the application by filing his counter affidavit to that effect. The 2<sup>nd</sup> respondent whose presence could not be secured even after being served by way of publication in Mwananchi and Uhuru newspapers of 10/06/2022 and 17/06/2022 respectively, ended up with an order to proceed ex-parte against him. At first parties were ordered to argue the application on merit by way of written submission, the orders which they complied with to the letters. The applicant enjoyed the services of Mr. Isaac Nassor Tasinga while Mr. Paul Elias proceeded on his own without representation. As the Court was preparing to compose the ruling and upon second thought suo motu raised the above stated issue, which is the subject of this ruling. It transpired

however that, only the applicant respondent to the issue by filing his submission in chief as the 1<sup>st</sup> respondent informed the Court that he had no response to the applicant's submission apart from praying for ruling date the prayer which was cordially granted.

In response to the issue raised by the Court while conceding that it is true there is multiplicity of prayer after citing the definition of the term **"omnibus"** as derived from the **Blacks Law Dictionary**, 8<sup>th</sup> Ed, Mr. Tasinga informed the Court that, the application is competent before this Court as all prayers are interrelated for sharing the same purpose which is of extending time. To him although the application contains a number of prayer it is not omnibus as there is no law that prohibiting omnibus prayers rather the same are encouraged for avoidance of unnecessary multiplied work-load and costs to the applicant. The learned counsel placed reliance on the cases of **Registered Trustees of the Evangelical Assemblies of God (T) (EAGT) Vs. Reverend Dr. John Mahene**, Civil Application No. 518/4 of 2017 and **MIC Tanzania Limited Vs. Minister for Labour and Youth Development and Another**, Civil Appeal No. 103 of 2004 (both CAT-unreported).

In his further argument Mr. Tasinga contended this Court has jurisdiction to entertain the third prayer as the same is incidental prayer connected to Court of Appeal as envisaged by Rule 45(a) of the Court of Appeal Rules that after issue of notice of appeal within 30 days, then the Registrar will have to issue the applicant with a Certificate of Delay. He impressed upon the Court that, it is the practice of this Court to issue the said prayer as it was done in the persuasive decision in Misc. Civil Application No. 69 of 2019 (HC-unreported) between **Dr. Salum Ali Chambuso Vs. Paul Elias Maro**. In view of the above submission this Court was invited to also invoke the principle of overriding objectives and find that the application is competent hence proceed to determine it on merit.

I had and ample time to internalise and chew out the applicant's submission as well as perusing the authorities relied on by him. In principle I am in agreement with him that, combination of omnibus prayers are encouraged by the Courts unless there is specific law barring that practice. See the cases of **MIC Tanzania Limited** (supra) and **The Registered Trustees of the Evangelical Assemblies of God (T) (EAGT)** (supra). In **MIC Tanzania Limited** (supra) when discussing on that practice of combining more than one prayer in the application, the Court had this to say:

*“Unless there is a specific law barring the combination of more than one prayer in one chamber summons, Courts 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”*

The object of the party preferring more than one prayer in a single application is not far-fetched as the procedure saves party' time, unnecessary multiplied work-load to the Court as well as aggravating costs to the applicant. In other word discouragement of the procedure has far reaching consequences than advantages. The Court of Appeal in **MIC Tanzania Limited** (supra) when discussing on the consequences of Court discouraging the procedure of combining more than one prayer in the application observed 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 application.”*

With the above understanding in mind I wish to stress here that, thought Courts in this jurisdiction are encouraging omnibus prayers, each case is decided basing on its own facts as observed in **MIC Tanzania Limited** (supra), since there are tests to be applied for determination whether the

application is competent for carrying omnibus prayer. This Court in the case of **Uwenacho Salum Vs. Moshi Salum Ntankwa**, Civil Application No. 367 of 2021, when considering the tests to be applied while making reference to case of **Gervas Mwakafwala & 5 Others Vs. The Registered Trustees of Morovian Church in Southern Tanganyika**, Land Case No. 12 of 2013 (HC-unreported) concluded that, omnibus prayer could be entertained by the Court when **One**, the said prayers are interlinked or interdependent and **second**, the same can be entertained by same court and not otherwise.

In this matter it is uncontroverted fact that, the first and second prayers are interlinked, therefore can be combined and entertained by this Court. The reason I am so holding is learnt from the fact that the second prayer is grantable depending on the grant of the first prayer and are both granted under section 11(1) of AJA and not under section 14(1) of the LLA. Section 11(1) of AJA which provides thus:

*11.-(1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, **may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court***

*concerned, **for making an application for leave to appeal** or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired. (Emphasis supplied)*

As regard to the third prayer by the applicant for extension of time to apply by letter for issue of certified copies of judgment and decree on appeal as well as the proceedings out time, no doubt the Court is moved under section 14(1) of LLA. However, I wish to state from the outset that the provision of the LLA are inapplicable under the circumstances of this matter, as the time to apply for copies of judgment, proceedings and decree for the purposes of appeal to the Court of Appeal and reliance on the Certificate of delay is governed by the Court of Appeal Rule, 2009 (the Rules). The provisions of Rule 90(1) of the Rules provides for 30 days within which to apply for copies of the judgment, proceedings and decree for the purposes of appeal. The provision reads:

*90.-(1) Subject to the provisions of rule 128, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged with –*  
*(a) a memorandum of appeal in quintuplicate;*  
*(b) the record of appeal in quintuplicate; (c) security for the costs of the appeal, save that where **an application for a copy of the proceedings in the High Court has been***

***made within thirty days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant. (Emphasis supplied)***

Much as the procedure for application of the copies of proceedings for appeal purposes to the Court of Appeal is governed by the Rules, no doubt its extension of time is also provided under the same law as the powers of the Court of Appeal to so do is derived from the provisions of Rule 10 of the Rules. The said Rule 10 of the Rules provides:

*10. The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended.*

From the above exposition of the law, since the application for proceedings for appeal purposes to the Court of Appeal is the requirement under the Rules and since its procedure for extension of time is not only governed by the Rules but also must be entertained by the Court of Appeal, it is



unquestioned findings of this Court that, the prayer by the applicant for extension of time to apply for the proceedings from the Registrar cannot be entertained by this Court. This Court in the case of **Stanbic Bank Tanzania Limited Vs. Paul Franciscal Kilasara**, Misc. Civil Application No. 586 of 2021 (HC-unreported) held a similar stance when confronted with similar situation to the present one where the applicant apart from applying for extension of time to file a notice of appeal and application for leave to appeal to the Court of Appeal, preferred a prayer for extension of time to apply for proceedings to the Registrar, had this to say:

*“It is apparent from the above provision that, the mandate to extend time set out by the CAT Rules is vested in the Court of Appeal. That being the case, extension of time within which to submit a letter requesting for certified copies of the proceedings, judgment and decree is at the exclusive domain of the Court of Appeal.”*

In light of the above findings and considering the test that prayers must be capable of being entertained by the same court and since in this matter the third prayer cannot not be entertained by this Court but rather the Court of Appeal, I am of the finding that, its combination in the present application renders this application incompetent as it could be filed in a different Court. For that reason I proceed to struck it out.

I order each party to bear its own costs as the issue disposing of the application has been raised by the Court suo motu.

It is so ordered.

Dated at Dar es Salaam this 10<sup>th</sup> day of February, 2023.



E. E. KAKOLAKI

**JUDGE**

10/02/2023.

The Ruling has been delivered at Dar es Salaam today 10<sup>th</sup> day of February, 2023 in the presence of Mr. Gladys James, advocate for the applicant, 1<sup>st</sup> respondent in person and Ms. Asha Livanga, Court clerk and in the absence of the 2<sup>nd</sup> respondent.

Right of Appeal explained.



E. E. KAKOLAKI

**JUDGE**

10/02/2023.

