

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF TANGA)

AT TANGA

MISCELLANEOUS CIVIL APPLICATION NO. 47 OF 2022

(Arising From Application for Execution No. 09 of 2020 of the District Court of Tanga)

SHAMIRA ZUBERI KANIKI -----APPLICANT

VERSUS

1. ALLY KHATIBU MKANGA-----1ST RESPONDENT

2. HUSSEIN NASSORO ALI-----2ND RESPONDENT

3. JAMAL MBAROUK SALIM-----3RD RESPONDENT

4. NASSORO MAJID SAID-----4TH RESPONDENT

5. TAN GOLBAL VENTURES CO. LTD-----5TH RESPONDENT

6. SHASHINHALE AUCTIONA MART

AND GENERAL TRADING COMPANY-----6TH RESPONDENT

RULING

27/01/2023 & 10/03/2023

MANYANDA, J.

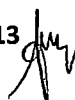
This is a ruling in respect of an omnibus application by Shamila Zuberi Kaniki, the Applicant, comprising of two applications, one is for extension of time within which the Applicant can file revision and the other for this Court to call for, examine and revise the record of the

District Court of Tanga in respect of an Application for Execution No. 09 of 2020.

The Applicant is moving this Court under Section 14(1) of the Law of Limitation Act, [Cap. 89 R. E. 2019] and Section 79(1) of the Civil Procedure Code, [Cap. 33 R. E. 2019] to grant two different orders simultaneously as prayed in the Chamber Summons, namely: -

- 1. That this Honourable Court be pleased to extend time for filing Revision Application against the Orders of the District Court in Application No. 09 of 2020; and*
- 2. That upon grant of extension of time, the Honourable Court be pleased to call for, examine and revise the record of the District Court of Tanga in respect of Application No. 09 of 2020 and satisfy itself as to correctness and legality of the order for auctioning including proclamation for sale and prohibitory order issued on 3^d day of November, 2020 by the District Court of Tanga in respect of the Applicant's property situated at Plot No. 37 Block "D", Mnyanjani Area in Tanga City and to nullify or set aside the said order.*

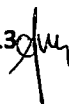
The application is brought by way of a Chamber Summons supported with an affidavit sworn by Shamila Zuberi Kaniki, it is countered by the Respondents in their respective counter affidavits.



The background gleaned from the affidavit and counter affidavits is that the Applicant, a wife of the 2nd Respondent, Hussein Nassoro Ali who was sued successfully by the 3rd and 4th Respondents in Civil Case No. 06/2017 at the District Court of Temeke and decreed to pay TZS 37,500,000/=. That in the process of enjoying their decree sought and obtained order to attach and sale a house situated at Plot No. 37 Block "D" Mnyanjani Area in Tanga City.

It is the story of the Applicant that the suit house is a matrimonial home in which she is living with her children. That, she was not aware of her husband borrowing from the 3rd and 4th Respondent and pledging the suit house, hence her efforts to stop the execution. Her husband, the 2nd Respondent admitted the facts as narrated above supporting his wife.

On the other hand, the 1st Respondent disputed all the facts alleged by the Applicant contending that she was aware of the loan borrowed by her husband and was also aware of the outcome of the judgement in Civil Case No. 06/2017 at the District Court of Temeke. Further to that the suit house is not a matrimonial house in which the Applicant lives with her children. The 3rd and 4th Respondents support the 1st Respondent's averments, so are the 5th and 6th Respondents.



With leave of the court, hearing was conducted by way of written submissions. The Counsel acted within the time. The submissions by the Applicant were drawn and filed by Mr. Khalfa S. M. learned Advocate. Those for the 1st Respondent were drawn and filed by Mr. Warehema Kibaha, learned Advocate, Mr. Christopher M. Wantora, learned Advocate drafted and filed the submissions for 3rd and 4th Respondent. The 5th and 6th Respondent did not file any submissions.

As stated in the introduction words, this application is an omnibus one. This is conceded to by the Applicant in her submissions that the application is a twofold. It is clearly indicated at the last two pages of the submissions by the 1st Respondent and at the first page of the 3rd and 4th Respondent's submissions.

The Applicant in the rejoinder admitted that the application is in fact an omnibus one but took refuge in an argument that since the legal issue was not raised as a preliminary objection, then it should be condoned by this Court.

Let me deal with this legal issue concerning the style of the application preferred by the Applicant. I chose to start with it because it was raised and argued by the parties though not formerly by a notice. Moreover, it is a legal requirement for courts to determine legal issues first before going into the merit of a matter.

The term 'omnibus' is defined in **Black's Law Dictionary 7th Edition by Bryan A. Garner** at page 1116 as relating to or dealing with numerous objects or items at once including many things or having various purposes.

The position of the law regarding omnibus prayers was explained by the Court of Appeal of Tanzania in the case of **MIC Tanzania Ltd vs. Minister of Labour and Youth Development and Another**, Civil Appeal No. 103 of 2004 (unreported), where it stated as a general rule that there is no law which bars the combination of more than one prayer in one chamber summons and encouraged courts to adopt the procedure of combining prayers in chamber summons. However, it put on emphasis and caution that, *each case must be decided on the basis of its own peculiar facts.*"

Another case which considered this point is that of **Zaidi Baraka and 2 Others vs. Exim Bank (T) Ltd**, Misc. Commercial Application No. 28 of 2015 (unreported) which was before Hon. Songoro, J. In this case, there were three prayers made, one was for an order of extension of time for issuing a notice of appeal to the Court of Appeal under section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R.E.2002], the second was for extension of time to apply for stay of execution of the Judgment and Decree under section 14 (1) of the Law of Limitation Act

Chapter 89 R.E. [20021 and the third was for stay of execution of the judgment and Decree pending the hearing and determination of the application under section 95 of the Civil Procedure Code, Cap. 33 R.E.2002].

After making reference to the authority in **MIC's case** Hon. Songoro, J. gave interpretation of the words, *"each case must be decided on the basis of its own peculiar facts"*, as means that the Court of Appeal was not fixing a general rule which has no exceptions. The exception is that each case is to be considered on its own facts, and merit.

I subscribe to this interpretation. It is my views that once there is a combination of prayers, or applications into one, the duty, and obligation is on the court to satisfy itself, if the combination, or the joining of applications into one is proper; that is the meaning of the words that *"each case must be determined on its own facts"*.

Yet in another case of **UDA Rapid Transit PLC and Another vs. Dar Rapid Transit Agency**, Misc. Commercial Application Cause No. 81 of 2018 Hon. Mruma, J. was confronted with a situation akin to this one. In that case the application was greeted with a preliminary objection with six points of law one of them was that the application was bad in law for containing omnibus prayers. Hon. Mruma, J. explored the principle established by the Court of Appeal in **MIC's case (supra)**. He

also explored the position in the case of **Alphonse Buhatwa vs. Julieth Rhoda Alphonse**, Civil Appeal No. 95 of 2010 (unreported) where the Court of Appeal held that the effect of filing an application in an omnibus form is to render that application incurably defective and the remedy for such application is to strike it out. Then he made a distinction between "omnibus prayers" and "omnibus applications". He said as follows: -

*It is important to note here that while in **MIC's case**, the Court of Appeal used the words "omnibus prayers in the chamber summons" in **Alphonse Buhatwa's case** the words used are "omnibus applications", which means that the Court of Appeal was dealing with two different scenarios. Omnibus application entails two distinct applications which are made in one application.*

More research on omnibus prayers took me to another case of **Rutagatina C. L. vs. Advocates Committee and Another** Civil Application No 98 of 2010 (unreported), in which the Court of Appeal dealt with the issue of whether under Rules 44, to 66 of the Court of Appeal Rules an "*Omnibus Application*" may be entertained. It stated that, it was never envisaged that, an intended Applicant would file several Applications in one; therefore, there was no room in its Rules for a party to file two applications in one. Then the 'Court' went on to say

that, under the relevant provisions of the law an application for extension of time, and application for leave are made different, governed by different provisions of the law, their determinations require different yardsticks and different jurisdictions.

Comparing the holdings by the Court of Appeal of Tanzania in **MIC's case (supra)** and **Rutagatina's case (supra)** Hon. Mruma, J. came up with opinion, in **UDA Rapid Transit PLC's case (supra)** to which I subscribe, that while the irregularity in "omnibus prayers" is allowable and curable, on the other hand, "omnibus chamber summons or applications" is incurable.

From the authorities cited above the governing principles in my firm conviction are the following, that is to say: -

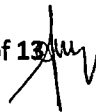
1. generally, the law allows the combining of two or more prayers into one application, the exception to this general rule is that *each case must be determined on its facts* per **MIC Case (supra)**;
2. the law discourages the filing of omnibus applications which lump up together applications that (1) are based on different provisions of the law, or (2) their determinations require different yardsticks to be taken, or (3) jurisdiction is different per **Rutagatina's case and Alphonse Buhatwa's case (supra)**;



3. there is a distinction between "omnibus prayers and "omnibus applications", while the irregularity in "omnibus prayers is curable, that in "omnibus chamber summons or applications" is incurable per **UDA Rapid Transit PLC's case (supra)**;
4. Once there is a combination of prayers, or applications into one, the duty, and obligation is on the court to satisfy itself, if the combination or the joining of applications into one is proper; that is the meaning of the words that "*each case must be determined on its facts*" per **Zaidi Baraka's case (supra)**.

Back to the application in hand, as seen above, this application is brought under two different laws, the application for extension of time is under Section 14(1) of the Law of Limitation Act, and the application for revision is under section 79(1) of the Civil Procedure Code, each one containing distinct orders grantable under different legal yardsticks. It reads: -

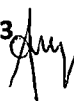
"Let all the parties concerned appear before Honourable Judgewhen the applicant shall be heard on applications for



- 1. That this Honourable Court be pleased to extend time for filing Revision Application against the Orders of the District Court in Application No. 09 of 2020; and*
- 2. That upon grant of extension of time, the Honourable Court be pleased to call for, examine and revise the record of the District Court of Tanga in respect of Application No. 09 of 2020 and satisfy itself as to correctness and legality of the order for auctioning including proclamation for sale and prohibitory order issued on 3rd day of November, 2020 by the District Court of Tanga in respect of the Applicant's property situated at Plot No. 37 Block "D", Mnyanjani Area in Tanga City and to nullify or set aside the said order.*

The first application seeks for extension of time for filing Revision Application against the Orders of the District Court in Application No. 09 of 2020. The second is an application seeking for revision of the decision in respect of Application No. 09 of 2020. The Chamber Summons is drawn basing on two different laws namely, Section 14(1) of the Law of Limitation Act, and Section 79(1) of the Civil Procedure Code.

Going by the principles above, it is allowable in law to combine prayers. For instance, one may combine a prayer for declaration of



ownership, vacant possession and costs etc. The rationale is that in omnibus prayers, the prayers are closely related therefore parties and the court deal with specific issues concerned and reaches just decision.

In this application however, as it can be seen, the first two requested orders in the Chamber Summons have quite different substance, applicable laws, issues, test principles and reliefs. In unrelated omnibus applications the issues get mixed up just as it has been in the instant application. Mixing up of the two matters together cannot be justly determined without bringing boggling confusion since there is no demarcation of the evidence, the applicable law, as well as the tests.

Omnibus prayer is curable irregularity but not an irregularity concerning omnibus application.

In this matter, even the parties mixed up issues in their submissions. For instance, the Applicant has taken most of his time arguing about illegalities in the proceedings and forgot his duty of establishing sufficient cause for extension of time by accounting for the delay of each day. Moreover, he invited this Court in one paragraph to revise the proceedings of the District Court for Tanga without specifying the grounds for revision. In other words, he did not tell any ground for revision I say so because grounds for extension of time cannot be the same grounds for revision.



My perusal of the application generally it sounds as if it is for extension of time within which to apply for revision. It means that the revision for revision is yet to be filed; the same would be filed after the application for extension of is granted. However, to the contrary, the submissions are arguing about the revision itself; hence total confusion. Even the Deputy Registrar did not call for record after the application was made, as such the application for revision which necessarily require availability of the records to be revised cannot be heard.

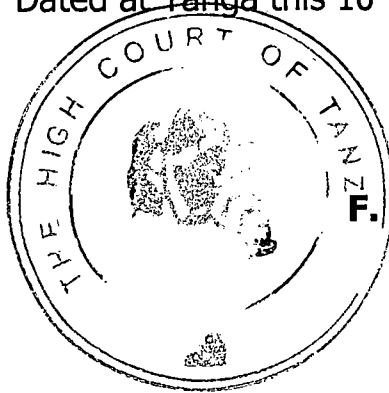
On the other hand, the Respondents has taken most of the time arguing on failure by the Applicant to establish sufficient cause for extension of time by accounting for the delay of every day and challenge allegations of illegalities. It is not clear as to what the respondent was replying whether extension of time or the revision it self. The reply is challenges the legal on mixing applications on grounds that there is no preliminary objection which is noneither a response to the application for extension of time or the revision itself.

My opinion is, and, according to the law elaborated above, the two applications for the two orders applied in this application could have been made and dealt with separately in sequence, that is, starting with application for extension of time, once granted, then a second

application for revision would follow. It is not necessary for the two applications to be heard by the same judge.

In situation like this one, using the authorities above, the obligation is on the court to satisfy itself, if the combination or the joining of applications into one is proper. I have already said it is improper, the current application before me is incompetent for being omnibus, hence, a nullity. Consequently, I hereby strike it out. Since the Respondent appears to have condoned to the procedure, I make no order as to costs. It is so ordered.

Dated at Tanga this 10th March, 2023




F. K. MANYANDA
JUDGE