IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 374 OF 2020

(Originating from Civil Case No. 269 of 1996)

CRDB (1996) LIMITED..... APPLICANT

VERSUS

GEORGE MPELI KILINDU

(As the Administrator of GEORGE MATHEW KILINDU).....1ST RESPONDENT

ANNE SUBILAGA KILINDU

(As the Administrator of GEORGE MATHEW KILINDU).....2ND RESPONDENT

RULING

Date of last Order: 21/01/2023.

Date of Ruling: 03/03/2023.

E.E. KAKOLAKI, J

This ruling is seeking to address the preliminary points of objection raised by the respondents challenging the competency of this application. Their grounds of objection are in three folds, that, **one**, the application is prematurely made for failure to apply for change of the applicant's name, **second**, the application is misconceived and bad in law for non-citation of

enabling provision of law and **third**, the application is misconceived and bad in law for being an omnibus application.

The challenged application is preferred by the applicant under the provisions of section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R.E 2019] herein to referred as AJA, Rules 83(1),(2) and 90(1) and (2) of the Court of Appeal Rules, 2009 GN. No. 368 of 2009 as amended (the Rules), section 14(1) of the Law of Limitation Act,[Cap. 89 R.E 2019] (the LLA) and any other enabling provisions of the law, praying for two orders. **one**, extension of time to file a notice of appeal out of time and **second,** for extension of time to apply for copies of proceedings, ruling, order and other documents necessary to institute the appeal out of time. The application is supported by the affidavit of applicant's head of legal services.

When served with the chamber summons the respondents vehemently resisted the application through their joint counter affidavit. Hearing of the application proceeded by way of written submissions and Court's orders for filing them were complied with to the letters. The applicant appeared represented by Mr. Mugisha Mboneko, learned advocate while the respondents enjoyed the services of Mr. Fraterine L. Munale, learned counsel.

Briefly before the Court of Appeal in its decision in Civil Appeal No. 110 of 2017 handed down on 23rd July, 2020, did strike out applicant's appeal filed against the decision of this Court Civil Case No. 269 of 1996, that entered judgment in favour of the respondent. The appeal was struck our on the ground that, the applicant had preferred it using the new adopted names of CRDB Bank PLC instead of CRDB (1996) Ltd, which appeared in the judgment sought to be impugned. Since the appeal could not be preferred by the person not formerly party to the suit in which its decision was sought to be challenged, the Court ruled it was incompetent before it. Similarly wrong names were also used by the applicant in her letter to the Registrar requesting for supply of copies of necessary documents to institute the appeal. It is out of such Court of Appeal decision of striking out of the applicant's appeal this application is preferred seeking for the two above mentioned orders.

As alluded to above parties complied with the Court's order by filing the submissions time. I had an ample time to peruse the eloquently prepared fighting submissions in which I am grateful to both counsel for their time and exercised brains to assist this Court arrive at a just decision. The respondents canvassed the 1st and 3rd grounds of objection in which this

ruling is also set to address, while silently abandoning the 2nd ground. I am however proposing to start with the third ground of objection in which the respondents are contenting that, the application is misconceived and bad in law for being an omnibus application.

Submitting in support of third ground of objection Mr. Munale argued that, the settled law is that an omnibus application is not fatal if the combined prayers are interlinked or interdependent, arise out of the same provisions of the law and save the same purpose. But when it is otherwise the application becomes irregular and incompetent before the Court as it was held in the case of **Nurdin Mohamed Chigo Vs. Salum Said Mtiwe and Another**, Misc. Civil Application No. 29 of 2021 (HC-unreported), Mr. Munale stressed. He contended in this matter the applicant has combined two prayers which are not linked as firstly, the prayer for extension of time to file a Notice of appeal out of time is preferred under section 11 of AJA while the one for extension of time to apply for necessary documents is nowhere provided within the enabling provisions cited by the applicant. Secondly, he said once extension of time to file the appeal is granted to the applicant, the right to apply for necessary documents falls within the extended time and it regulated by separate laws, hence the two prayers are not interdependent.

To that end he submitted, the application is incompetent as the applicant ought to have filed two separate application the position which was cemented by the Court of Appeal in the case of Juma M. Nkondo Vs. TOL Gase Limited/Tanzania Oxygen Limited and Another, Civil Application No. 382/01 of 2019 (CAT-unreported) where it was held that omnibus prayers if not provided under the cited enabling provision one has to file a separate application for the same. Mr. Munale, thus invited the Court to uphold the preliminary objection and proceed to struck out the application.

In rebuttal, Mr. Mboneko attacked the respondents' submission and discredited the cases relied on in that their facts are distinguishable from the facts of this case, while maintaining that the application at hand is competent before the Court. He said, in both **Juma Nkondo** (supra) and **Nurdin Chingo** (supra) the prayers were totally different from each other hence require different affidavits, but in this case the adduced facts suffices to support the application without unnecessarily require the applicant to file separate application. In his submisiion both prayers by the applicant are interlinked in the sense that, they are requirements of the law for facilitating the appeal procedure to the Court of Appeal under Rules 83(1),(2) and 90(1) and (2) of the Rules and section 14(1) of LLA. He argued, the appeal is

incomplete without notice of appeal and the letter requesting necessary documents/proceedings from the trial court.

According to him, the test to be applied as to whether the combination of prayers is irregular or not is the convenience of the applications and not similarity of provision in which prayers are made from, as it was stated in the case of **MIC Tanzania Ltd Vs. Minister for Labour and Youth Development and Another**, Civil Appeal No. 103 of 2004 (CAT-unreported). He said, in that case the Court of Appeal ruled that, the application for extension of time, leave to apply certiorari and stay of execution could be conveniently combined despite of the fact that, they come from different provisions of the law. In his view, the application is competent hence the raised objection is bound to fail and so prayed this Court to so find. In rejoinder submission Mr. Munale almost reiterated his submission in chief hence I see no point of reproducing the same.

Having chewed and internalised the rivalry submission from both parties, the issue placed before the Court for determination by them is whether the application is misconceived and therefore bad in law for being omnibus application. Mr. Mboneko contends it is not as the same is encouraged since the test to be applied whether combination of prayers is irregular or not is

the convenience of the applications which would have been preferred and not similarity of the provisions in which prayers are made from, while Mr. Munale though in agreement that omnibus applications are encouraged, is of the different view that, the same must be interlinked otherwise the application is rendered incompetent.

In principle, I am in agreement with both parties 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) Vs. Reverend Dr. John Mahene**, Civil Application No. 518/4 of 2017 (CAT-unreported). In **MIC Tanzania Limited** (supra) when discussing on that practice of combining more than one prayer in the application 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 preferring this procedure of praying for more than one prayer in a single application is not far-fetched as it aims at saving party' time,

relieve both applicant and the Court from unnecessary multiplied work-load as well as aggravating costs to the applicant. In other word an attempt to discourage the procedure has far reaching consequences than advantages. The Court of Appeal in **MIC Tanzania Limited** (supra) when discussing on the consequences of Courts discouraging the procedure of combining more than one prayer in the application had this to say:

> *"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."*

In expounding the befalling consequences when the procedure for preferring more than one prayer in the application is discouraged as stated above, in my considered opinion the Court of Appeal did intend to discuss the test to be applied when determining whether the omnibus prayers are irregular or not in the application to be convenience of the application as Mr. Mnoneko would want this Court to believe, but rather to encourage unnecessary applications and avoidance of wastage of money and time for preferring applications which would have been conveniently combined. Combination of prayers in a single application in my humble view depends on a number of

tests, since each case is decided basing on its own facts as observed in **MIC Tanzania Limited** (supra).

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 when determining whether the combined prayers are irregular or not, while referring 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) held that, omnibus prayers can only be entertained by the Court upon passing two tests, **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 prayer is grantable under section 11(1) of AJA and not under Rules 83(1),(2) and 90(1) and (2) of the Rule and section 14(1) of the LLA as cited by the applicant in the chamber summons. Section 11(1) of AJA 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 second prayer by the applicant for extension of time to apply for necessary documents for filing the record of appeal, no doubt the Court is intending to move under section 14(1) of LLA as Rules 83(1),(2) and 90(1) and (2) of the Rules do not refer anything concerning extension of time for doing any act. However, it is worth stating from the outset that the provisions of the LLA are inapplicable under the circumstances of this matter, as the time to apply for copies of necessary documents for appeal purposes 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 relied on by the applicant to move this Court for the second prayer 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 necessary documents for appeal purposes to the Court of Appeal is governed by the Rules, it goes without saying that, its extension of time also is 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 necessary documents 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 unescapable findings of this Court that, applicant's prayer for extension of time to apply for the necessary documents for appeal purpose cannot in anyway be entertained by this Court. Similar stance was taken by this Court speaking through my brother Kisanya J, in **Stanbic Bank Tanzania Limited Vs. Paul Francial Kilasara**, Misc. Civil Application No. 586 of 2021 (HC-unreported) when confronted with a situation akin to the present one, where the applicant apart from applying for extension of time to file a notice of appeal, preferred a prayer for extension of time to apply for proceedings to the Registrar. In arriving to the findings that, the prayer for extension of time to apply for necessary documents for appeal purpose was in the domain of another Court observed thus:

> *"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 view of the above findings and application of the second test as stated by this Court in **Uwenacho Salum** (supra) that, omnibus prayers must be

capable of being entertained by the same court, since in this matter the second prayer cannot be entertained by this Court, rather by the Court of Appeal, I am of the settled findings that, its combination in the present application renders the application incompetent as ought to be filed in a different Court. This application is for that reason struck it out for being incompetent.

The respondents are awarded costs of the application.

It is so ordered.

Dated at Dar es salaam this 03rd day of March, 2023.

E. E. KAKOLAKI

JUDGE

03/03/2023.

The Ruling has been delivered at Dar es Salaam today 03rd day of March, 2023 in the presence of Mr. Brian Odara, advocate for the applicant, Mr. Fraterine Munare, advocate for the 1st and 2nd respondents and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.

E. E. KAKOLAKI

JUDGE

03/03/2023.


IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY