

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 417 OF 2022

(Arising from the decision of High Court, in Misc. Civil Application No. 114 of 2019 dated 11/10/2019, Probate Appeal No. 32 of 2017 before the District Court of Kinondoni and Original (PC) Probate Cause No. 221 of 2008)

HAMISI HAIDARY KAVIRA..... APPLICANT

VERSUS

**SHEILA HAIDARY KAVIRA (the Administratrix
of the estate of the late HAIDARY NASSORO KAVIRA).....1ST RESPONDENT**

**RAMADHANI YUSUPH LWAMBO(the Administratrix
of the estate of the late HAIDARY NASSORO KAVIRA).....2ND RESPONDENT**

RULING

Date of last Order: 04/04/2023.

Date of Ruling: 21/04/2023.

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 to as AJA, preferred this application praying for three orders. **one**, extension of time within which to file an application for certification that points of law exist in the decision in Misc. Civil Application No. 114 of 2019, **second**, for extension of time to file and serve a letter seeking for copies of judgment, decree and proceeding of this Court in Misc. Civil Application No. 114 of 2019 for appeal purposes and **third**, extension of time to file a notice of appeal against the decision of this Court made on 11/10/2019 in Misc. Civil Application No. 114 of 2019. The application is supported by the applicant's affidavit.

When served with the chamber summons the 1st respondent vehemently resisted the application by filing his counter affidavit to that effect save for the 2nd respondent who seemed not interested.

Before the matter could be heard on merit this Court suo motu raised the above stated issue, subject of this ruling and invited both parties to address it on the same. The applicant enjoyed the services of Mr. Barnabas Luguha while Mr. Privaty Rugambwa represented the 1st and 2nd respondents. During hearing parties were heard viva voce.

It was Mr. Luguha who staged the Court floors first and argued that, the application is competent before the Court as omnibus application is composed more than one application or prayer which cannot be heard and determined together. In this application, the learned counsel submitted this Court has jurisdiction to entertain the application as they all fall under the purview of section 11(1) of AJA. When probed by the Court on the propriety of the second application/prayer in this application, Mr. Luguha was quick to respond that the same was wrongly placed in herein, hence prayed to abandon the same and urged the Court to find the application is competent and proceed to deal with the remaining two applications, as Courts in our jurisdiction are encouraging omnibus applications.

In response Mr. Rugambwa contended that, the application ceases to be omnibus when the joined application are interlinked or interrelated and not when two independent applications are preferred in a single application like the present matter. The learned counsel relied on the case of **Juliana Armstrong Jerry Vs. International Commercial Bank and 2 Others**, Misc. Land application No. 30 of 2022 (HC-unreported), where this Court held that, two or more independent matter cannot go together in one application, unless they are interrelated and can conveniently be jointly

determined by the Court. He argued further that, once prayers or applications are unrelated, the application will be held incompetent hence struck out as it was held in the case of **Constantine Nzumi Vs. CRDB Bank Ltd and 3 Others**, Application for Revision No. 3 of 2021 (HC-unreported). In his submission, since the 2nd application or prayer is not related to others which renders the application incompetent then the same is bound to be struck out with costs. As regard to the prayer by Mr. Luguha to abandon the 2nd application and for this Court to proceed with the remaining applications he resisted the same on the ground that, the prayer is untenable as the application is already rendered incompetent.

In his rejoinder submission Mr. Luguha was insistent that, the prayer for abandoning the 2nd application is tenable as the issue under consideration was raised by the Court and not the respondents, hence maintained his prayer that, after abandoning the 2nd application then this Court be pleased to determine the remaining applications on merit.

I have dispassionately considered the rivalry submissions by the counsel for both parties. I am in agreement with both parties that, omnibus application in itself is not bad and therefore not prohibited by law when the preferred applications are interrelated or interlinked and can conveniently be

determined by the Court as it was held by this Court in the case of **Juliana Armstrong Jerry** (supra). See also the decision of Court in **Uwenacho Salum Vs. Moshi Salum Ntankwa**, Civil Application No. 367 of 2021, when considering the tests to be applied in determining whether the omnibus is tenable or not, 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) and 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 as rightly admitted by Mr. Luguha that, the second application for extension of time to file and serve a letter seeking for copies of judgment, decree and proceeding of this Court in Misc. Civil Application No. 114 of 2019 for appeal purposes, is wrongly placed before this Court. It is so as the Court with competent jurisdiction of entertain it as well as the law applicable are different as it is the Court to Appeal which is crowned with jurisdiction to entertain the same under the Court of Appeal Rule of 2009 and not this Court under section 11(1) of AJA. I therefore shoulder up with Mr. Rugambwa's proposition that its inclusion

in this application renders the whole application incompetent before this Court. Since the application is incompetent again the prayer to abandon the 2nd application become untenable as once the matter is incompetent cannot be abandoned as the only remedy is to strike it out as it was held by this Court in the case of **Constantine Nzumi** (supra). In view of the above I reject Mr. Luguha's prayer to abandon the 2nd application for rendering this application incompetent.

In the premises, the application is incompetent before the Court and is hereby struck out. I order no costs as the issue disposing of the matter has been raised by the Court.

It is so ordered.

DATED at Dar es salaam this 21st April, 2023.



E. E. KAKOLAKI

JUDGE

21/04/2023.

The Ruling has been delivered at Dar es Salaam today 21st day of April, 2023 in the presence of the 2nd respondent in person and Ms. Asha Livanga, Court clerk and in the absence of the applicant and 1st respondent.

Right of Appeal explained.



E. E. KAKOLAKI
JUDGE
21/04/2023.

