IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CAUSE NO. 21 OF 2023

STANLEY J. KEVELA t/a YONO AUCTION MART

& COMPANY LIMITED .....APPLICANT

VERSUS

CHAIRMAN, COURT BROKERS AND PROCESS SERVERS

APPOINTMENTS AND DISCIPLINARY COMMITTEE.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

12/06/2023 & 20/06/2023

KAGOMBA, J

The applicant has filed in this Court a chamber summons made under rule 5(1),(2)(a)–(d),(3)–(6) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 [G.N No. 324 of 2014] (" **2014 Rules**") and section 18(1) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap. 310 R.E 2002] (now R.E 2019) ("**Cap. 310**"). He is praying for leave to file an application for orders of *certiorari*, *mandamus* and prohibition against the decision of the 1st respondent which suspended him from conducting court broker services for six months effective 9th March, 2023 on disciplinary grounds.

In the same application, the applicant also prays for other nine (9) reliefs, to be reproduced in due course. The applicant has also filed a statement together with an affidavit sworn by himself to verify his statement.

On the other hand, the application is opposed by the respondents who have filed a counter affidavit and a statement in reply, with leave of the court. For immediate attention, however, is a notice of preliminary objection on points of law, filed by the respondents stating that:

1. The application is untenable in law for being omnibus.
2. The application is untenable in law for being preferred against a person (1st respondent) who has no legal personality.

On the date set for hearing of the preliminary objection, Mr. Samuel Shadrack, learned advocate appeared for the applicant while Ms. Kause Kilonzo, learned State Attorney appeared for the respondents.

Ms. Kilonzo, in support of the first point of preliminary objection, argued that the chamber summons filed by the applicant illegally combined three unrelated prayers which are also based on different provisions of the law. She demonstrated that while the application for leave to file for judicial review is made under section 18 of **Cap. 310** and rule 5(1),(2)&(3) of the **2014 Rules**, the application for a temporary injunction is supposed to be

made under Order XXXVII and section 68 of the Civil Procedure Code, [Cap. 33 R.E 2019] ("**CPC**"); and the prayers listed under paragraphs (c), (d), (e), (f), (g) and (h) of the Chambers Summons are for judicial review covered under section 17(1)&(2) of **Cap. 310** and rule 8 of **2014 Rules**. It was her contention that, in law, such different types of prayers cannot be filed together in one application and doing so makes the application legally untenable. She asserted that judicial review remedies were to be sought after the leave was granted, and by covering prayers falling under different provisions of the law, the application became unacceptably omnibus.

To support her above contention, she cited the case of **Mohamed Salimin vs Jumanne Omary Mapesa**, Civil Application No. 103 of 2014, CAT, Dodoma and **Ghati Methusela vs Matiko w/o Marwa Mariba**, Civil Application No. 6 of 2006, CAT, Mwanza. She also brought to the attention of the court the decision in the case of **Mondorosi Village Council and 2 Others vs Tanzania Breweries Ltd and 4 Others**, Civil Appeal No. 66 of 2017, CAT at Arusha, on the importance of observing mandatory provisions of the law and disapplication of the overriding objective principle to infringe such provisions. Based on these authorities, she prayed the court to struck out the application for being omnibus, with costs.

On the second limb of the objection, Ms. Kilonzo argued that the 1st respondent lacked legal personality to be sued. She submitted that the Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) Rules, GN No. 363 of 2017 ("**GN 363/2017**") which establishes the Court Broker and Process Servers Appointments and Disciplinary Committee is silent on suability of its chairman. She suggested that since the Committee is under the High Court of Tanzania, the proper party to be sued is the Judiciary of Tanzania. She, therefore, prayed the court to find the application incompetent for being preferred against a wrong party, cautioning on unenforceability of the court orders if made against the 1st respondent.

Basing on the above submissions, Ms. Kilonzo prayed the court to find merits in both points of the preliminary objection and proceed to struck out the application with costs.

In his reply to the first point of preliminary objection, Mr. Shadrack for the applicant, contended that the prayer for a permanent injunction is made under rule 7(5) of **2014 Rules** which allows the court to grant interim reliefs in the course of considering leave application. He therefore brushed aside the argument by his counterpart that the prayers in the chamber summons come under different laws.

Mr. Shadrack further opposed the argument that the application is an omnibus. He argued that the key prayer in the chamber summons is for the leave to file for judicial review, while other prayers are to be considered by the court subsequent thereto. He prayed the court to overrule the first point of objection for those reasons.

On the second limb of objection, Mr. Shadrack first relied upon the provision of Order I Rule 9 of the **CPC** contending that a suit shall not be defeated for a reason of non-joinder or mis joinder of parties. He went further to submit that since the Committee is legally established under rule 3(1) of **GN No. 363/2017**, the 1st respondent is capable of being sued. To demonstrate suability of the 1st respondent, he reflected on the Committee's disciplinary powers against court brokers, arguing that in case of misuse of such powers it cannot escape to be sued. He therefore prayed the second point of objection to be also overruled.

Rejoining, Ms. Kilonzo maintained her submission in chief and urged the court to be guided by rule 5(2)(a) and (b) of **2014 Rules** on the manner an application for leave to file for judicial review is supposed to be made.

She emphasized that the orders sought under paragraphs (b), (c), (d), (e), (f), (g) and (h) of the chamber summons are independent and would

require the court to scrutinize the facts in order to grant them. She added that rule 7(5) of **2014 Rules** which empowers the court to grant interim reliefs cannot serve the application from being omnibus.

On the second limb of objection, Ms. Kilonzo rejoined that the provision of Order I rule 9 of the **CPC** cited by her counterpart is not only inapplicable in this matter but also it cannot cure the 1st respondent's lack of legal personality. In the end, she maintained that the application is untenable and prayed the court to struck it out with costs.

Having heard the above submissions from both legal minds, this court is set to determine whether this preliminary objection is meritorious.

In the first limb of the preliminary objection, the specific question is whether the application is omnibus. According to en.m.wikipedia.org, the term omnibus is derived from Latin to mean "to, for, by, with or from everything". It is a single document that "packages together several measures into one or combines diverse subjects". The position of the law as I know it is that an application that combines two or more unrelated applications either by the provision of the law under which the reliefs are supposed to be sought or the scheduling of their filing or which call for consideration of different factors in granting them is an omnibus application.

It is also an irrefutable position of the law that an omnibus application is incompetent and becomes liable to be struck out. There is ample case law to support the stated legal positions. For example, in **Mohamed Salimin vs Jumanne Omary Mapesa** (supra), the Court of Appeal held;

> *"As it is,* ***the application is omnibus for combining two or more unrelated applications****. As this Court has held for time(s) without number an* ***omnibus application renders the application incompetent and is liable to be struck out****."* [Emphasis added]

Probably, the above position needs to be better understood. In order to avoid multiplicity of cases, combination of distinct reliefs may be allowed. However, such reliefs to be combined they must be related or compatible. This means, if an application contains a combination of unrelated or incompatible reliefs, such application shall be rendered omnibus, hence incompetent.

While Mr. Shadrack submitted that the main application is for leave and the rest of the reliefs are to be considered subsequently, my perusal of the chamber summons reveals that the applicant has combined different reliefs which are incompatible with the leave application. To fully appreciate

this point, I find it imperative to reproduce the following part of the chamber summons under which the rest of the prayers were submitted to the court:

> ***Pursuant to the grant of the leave this Court be pleased to issue the following orders pending the filing of the application for prerogative orders:***
>
> *(b) A temporary injunction suspending the ban to the Applicant and thus allow the continuation of the Applicant to accomplish assignments which have already been commenced before the suspension and reports are yet to be issued by the Applicant to the court and parties until the final determination of the application for prerogative orders to lodge Judicial review application challenging the decision terminated (sic) the Applicant from conducting Court Broker activities for six months.*
>
> *(c) That the certiorari should issue to remove into this court and quash the ban/ termination to the Applicant issued by the 1st respondent and the entire process that led to its issuance;*

(d) That certiorari should issue because the 1st respondent did not observe the principles of natural justice in her decision to ban the Applicant for six months.

(e) That Mandamus should issue to compel the two Respondents to scrupulously observe the rules of natural justice and cardinal principles of rule of law in their dealings with the Applicant henceforth;

(f) That mandamus should issue to compel the Respondents to respect the legal rights of the Applicant to accomplish semi-finished assigned (sic).

(g) That prohibition should issue to bar the Respondents from ever interfering with the smooth operation in finalizing already issued execution orders.

(h) That prohibition should issue to bar the Respondents from ever intimidating and harassing the Applicant in his accomplishing orders of execution'.

[Emphasis added]

Clearly as it can be gleaned from the above excerpt, while applying for leave, the applicant simultaneously prays for prerogative orders of *certiorari*, *mandamus* and prohibition, even before the leave is granted. Without hesitancy, I find these reliefs to be unrelated and highly incompatible with the main prayer at this stage. No provision of the law has been cited in the chamber summons specific for these other reliefs apart from those covering leave application. While the applicant has cited rule 5(1) – (2) (a) –(d), (3) – (6) of the **2014 rules**, as well as section 18(1) of **Cap 310** which relate to leave application only, the superimposition of the application for orders of *certiorari*, *mandamus* and prohibition in the same application is obviously untenable under the cited enabling provisions.

The untenability of the combined applications above arises from the fact that the reliefs sought are governed by different provisions of the law as correctly argued by Ms. Kilonzo; the time frames for filing them is different since leave had to be granted first before the applicant could engage the court to consider, in a separate application, the orders of *certiorari*, *mandamus* and prohibition. Also true is the fact that the factors to be considered by the court in granting such different reliefs are different. I wish to further narrate some of the distinctions hereunder.

Starting with the first prayer for leave to file an application for judicial review, this is governed by rule 5, 6 and 7 of **2014 Rules**. In granting the same the court must consider, among others things, whether the application has been filed within prescribed period of six months from the date when the impugned decision was made and if there is compliance with Form A set out in the schedule to the **2014 Rules**. Also, the court has to consider if there is an arguable case and whether the reliefs might be granted on the hearing of the substantive application. (See the case of **Njuguna V. Minister for Agriculture** [2000] 1 EA 184).

As for prerogative orders, they are governed by rule 8 of **2014 Rules** and section 17 of **Cap 310.** The same shall be made within fourteen (14) days from the day when the leave was granted and not in the same application as the leave. Rule 8(1) (b) provides:

> *'8-(1) Where a leave to apply for judicial review has been granted, the application shall be made-*
>
> *(a).....*
>
> *(b)within fourteen days* ***from the day of the leave was granted'.*** [Emphasis added].

In granting prerogative orders, the court shall also be minded to find out if the application format is in conformity with Form B set out in the schedule to the Rules in consonance with rule 8(2) of the **2014 rules**. Other factors to be considered include the legality of the impugned decision, lack or excess of jurisdiction by a body that made the decision and observance of the rules of natural justice. (See the case of **Sanai Murumbe vs Mhere Chacha** [1990] TLR 54).

In **Rutagatina C. L. vs The Advocates Committee and Another**, Civil Application No. 98 of 2010, the Court of Appeal at Dar es Salaam, when confronted with an omnibus application, had the following to say;

> *'Under the relevant provisions of the law an application for extension of time and an application for leave to appeal are made differently. The former is made under Rule 10 while the latter is preferred under Section 5 (1) (c) of the Appellate Jurisdiction Act read together with Rule 45. So,* ***since the applications are provided for under different provisions it is clear that both cannot be "lumped" up together in one application,*** *as is the case here.'* [Emphasis added].

The Court of Appeal went on to say;

> *'The* ***time frames within which to prefer the applications are also different****. For example, by its nature, an application*

*under Rule 10 has no time frame within which to be filed... **In determining both applications the considerations to be taken into account are different**... In the totality of the foregoing, we are satisfied that the Rules do not provide for an omnibus application. For this reason, we hereby strike out this omnibus application.'* [Emphasis added].

Similarly, in the case of **Juma M. Nkondo vs Tol Gases Limited/Tanzania Oxygen Limited and Another**, Civil Application No. 382/01 of 2019, CAT, Dar es Salaam, the Court of Appeal held that;

*'... I fully subscribe to the proposition taken by Mr. Mbamba that the **application is not properly before the Court because of being omnibus. The reason is not far-fetched as the applicant is seeking for two distinct reliefs which is extension of time to file an application for leave to appeal to the Court and leave to appeal to the Court**'*[Emphasis added]

We learn from the above cited decisions of the apex court of the land that an application will be adjudged omnibus and thus improperly before the court for one or several of the following factors; firstly, where time frames within which to prefer the applications are different. Secondly, where in determining the several applications combined in one, the factors to be taken

into account are different, and thirdly, where two or more distinct reliefs are being sought in the same application.

In the application at hand, much as it can be said that all the reliefs are governed by **Cap. 310** and **2014 Rules**, not all of them are granted under the provisions of the law cited in the chamber summons. Also, the time frame for their filing is obviously different. I have stated earlier that the leave was to be sought and granted first before orders of *certiorari*, *mandamus* and prohibition could be granted. To add to the pile, even the factors to be considered in determining applications for leave to file for judicial review and granting of prerogative orders could be different.

In his reply submission, Mr. Shadrack made an implied admission that this application is omnibus by stating that the key application in the chamber summons is about leave to file application for judicial review and the other prayers are to be considered subsequent thereto. He referred to the opening phrase of the paragraph that introduces reliefs (b) to (j) in the chamber summons, where the words **"pursuant to the grant of leave..."** have been used. The learned counsel interpreted this phrase to mean that the other reliefs were to wait for granting of leave. Whatever he really meant, the court is alive to the legal principle that parties are bound by their

pleadings. The chamber summons has combined both application for leave and prerogative orders in one, which makes it omnibus.

In the upshot, I find merit in the first point of preliminary objection and the same is accordingly sustained. I shall therefore reserve energy by not deliberating on the second limb of the objection because the above determination is sufficient to dispose of this matter. Accordingly, the application is incompetent for being omnibus. Consequently, the same is struck out with costs.

Dated at **Dodoma** this 12th day of June, 2023.

ABDI S. KAGOMBA

JUDGE