IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT SUMBAWANGA

MISC. LAND APPLICATION NO. 27 OF 2022

(Arising from the decision of Hon. Ndunguru, J. in Misc. Land Appeal No. 42 of 2020 High Court of Tanzania at Sumbawanga, emanating from Land Appeal No. 42 of 2020 in the District Land and Housing Tribunal for Rukwa at Sumbawanga which originated from Original Land Dispute No. 37 of 2019 from Sumbawanga Asilia Ward Tribunal)

WILLIAM KIPE.....APPLICANT

VERSUS

SPECIOZA MAJURA.....RESPONDENT

RULING

31st October & 11th December, 2023

MRISHA, J.

The applicant **William Kipe**, knocked the doors of this court with the chamber summons seeking for the following orders: -

1. **That, this honourable court be pleased to grant leave and certificate certifying points of law for the applicant to appeal to the Court of Appeal of Tanzania.**

2. **Costs of this application be borne by the respondent.**
3. **Any other relief (s) that this honourable court deem fit and just to grant.**

The application is supported by the affidavit of Mathias Budodi, advocate dully authorized to depose for the applicant. At the hearing stage, the applicant was represented by Mr. Mathias Budodi, learned advocate, while the respondent one **Specioza Majura** appeared in person, unrepresented.

Both parties made their submissions orally for and against the present application and also the applicant urged to the court to adopt the chamber summons and affidavit which contain grounds and reasons for his application. However, for the reasons to be put apparently shortly, I will not dwell much on those submissions, rather I will focus on whether the instant application is competent before the court for containing two distinct prayers.

That issue was raised by the court *suo motu* after observing that the chamber summons in respect of the applicant's application, contains a combination of two prayers namely **application for grant of leave** and **certificate certifying points of law** for the applicant to appeal to the Court of Appeal against the decision of this court in Misc. Land

Appeal No. 42 of 2020 which was handled down by this court through Hon. Ndunguru, J. on 22.09.2022 in favour of the respondent.

Having observed so, I asked both parties to address me on such issue and both of them had a consensus that the same be addressed by way of written submissions. Both of them complied with the order of the court made on 29.08.2023, and the following is a summary of their respective submissions: -

In addressing the court on that issue, the respondent submitted very briefly that the application at hand is omnibus because it is undisputed fact that the same contains two distinct prayers combined in one application, as it appears at paragraph 1 of the applicant's chamber summons lodged by the applicant which according to her, makes it to be incompetent for having two distinct prayers.

In cementing the above proposition, the respondent referred to the court the case of **Rutagatina C.L vs The Advocates Committee and Another**, Civil Application No. 98 of 2010 CAT at Dar es Salaam (unreported) where the Court of Appeal held that:

> *"...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."*

The respondent further submitted that even assuming, without concluding, that the court rules that the present application is tenable, the same will not be of any use for the court because under the circumstances of this case and at this stage of an intended appeal, the said appeal has no chances of success.

She went on arguing that the court is aware that should it grant the instant application, the Court of Appeal will be the third appellate court, but it is clear from the impugned judgment of this court that both points of facts and law have been thoroughly pursued and dealt with to the extent that they need not being dealt with in the third appellate court.

Hence, it was her submission that allowing the applicant's application will be tantamount to creating a scenery whereby the Court of Appeal will be stepping in the same footprints left behind by the High Court instead of dealing with the new issues.

The respondent went further by submitting that the issues that were raised by the applicant like adverse possession, long time use and allocation of the disputed land, are the ones which were dealt with by this court in its judgment.

In conclusion, the respondent humbly submitted that the court be pleased to dismiss the applicant's application with costs for want of merit.

Mr. Budodi who was the second party to address the court on behalf of the applicant, replied by submitting that not all applications which are unallowed to be combined in one application, save for the Court of Appeal where the Court held long time ago that combination of more than one prayer is an alien procedure.

He went on submitting that in the High Court and subordinate courts, the combination is allowed on condition that prayers should not be barred by any specific law. He referred the court to the case of **Mic Tanzania Limited vs Minister for Labour and Youth Development and Attorney General**, Civil Appeal No. 103 of 2004, CAT at Dar es Salaam (unreported) where it was stated that:

> *"The parties will find themselves wasting more money and time on avoidable applications which would have been conveniently combined. Therefore, unless there is a specific law barring the combination of more than one in one chamber summons, the courts should encourage this procedure rather than thwart it for fanciful reasons."*

Having referred the above authority, the counsel for the applicant submitted that in essence, their application contains one prayer that is, ***"the applicant to be granted leave and certificate of point of law"***. He was of the view that semantically, those are not two prayers, and that even if they are interpreted to be two prayers, yet the same are not specifically barred by the law as they do not oppose to each other.

He further submitted that it is an established principle of law that in application like the one at hand, the court can look on the prayers as stated in the chamber summons, and beyond the affidavit and once it is satisfied that the supporting affidavit sufficiently points out the points of law worthy for determination, it can proceed to grant application by certifying those points of law, as it was held in the case of **Maulid Makame Ali vs. Kesi Khamis Vuai**, Civil Appeal No. 100 of 2004, CAT at Zanzibar (unreported).

Mr. Budodi did not end there; he also referred to the court the case of **John Balbala vs. Eveline John**, Misc. Land Application No. 26 of 2020, in which the court was confronted with an akin situation, as the applicant prayed for an order that the High Court be pleased to certify a point of law and grant leave to appeal to the Court of Appeal, and the

court proceeded to determine the application on merits and certified the points of law involved therein.

In a bid to back up his argument on that point, the learned counsel cited the case of **Mic Tanzania Limited** (supra) where it was held that:

> *"We wish to emphasize, all the same, that each case must be decided on the basis of its own peculiar facts. Having perused the chamber summons and its supporting affidavit as well as the respondent's counter affidavit in the High Court, we are satisfied that the three prayers were properly combined in one chamber summons. They were not diametrically opposed to each other but one easily follows the other"*

In addition to the above, Mr. Budodi submitted that the style of prayers in their chamber summons, was triggered by the guidance of the Court of Appeal in the case of **Jerome Michael vs Joshua Okanda**, Civil Appeal No. 19 of 2014, CAT at Mwanza (unreported) where the Court of Appeal stated that:

> *"The appellant who wishes to access the Court of Appeal for the third appeal for a land dispute which originates from the ward tribunal, is required to seek from the High Court of Tanzania (Land Division) two orders. The first one is an order*

seeking for leave to appeal... The second requirement the applicant has to comply with under section 47 (2), is to get a certificate from the High Court that a point or points of law are involved in the matter for the determination of the Court of Appeal."

Relying on the above authority, the learned applicant's counsel submitted that in the circumstance of the present application, the two orders which are **grant of leave** and **certification of point of law**, are not diametrically opposed to each other.

He added that it is a settled law that an application for leave is usually granted if there are good reasons, normally on a point of law or on a point of public importance. Hence, according to him, the case of **Rutagatina C.L vs The Advocates Committee and Another** (supra) cited by the respondent, is distinguishable to the instant matter particularly on the third paragraph of page 5 of the Ruling of the Court where it was stated that:

"In determining both applications, the considerations to be taken into account are different. An application under rule 10 may be granted upon good cause shown. An application for leave is usually granted if there are good reasons, normally on a point of

law or on a point of public importance, that calls for this Court's intervention."

Finally, Mr. Budodi submitted that on their part, they have done exactly what the guidance requires. However, he added that, would this honourable court find that they have misinterpreted the decision of the Court, or that the prayers sought by them are opposed to each other to the extent that they cannot be lumped up in one application, then as the above issue was raised *suo motu*, it was his prayer that the court be pleased to allow them to amend their application.

He cited the case of **Alaf Limited vs The Board of Trustees of the Public Service Social Security Fund (PSSF) and Another**, Civil Application No. 529/01 of 2023, CAT at Dar es Salaam (unreported)g where the Court of Appeal stated that:

"On the premise above, I am satisfied that the application above is misconceived, therefore as to what remedy to follow, since the above irregularity was established by the court, then therefore under rule 4 (2) of the Rules, in order to meet the end of justice, I order amendment of the application by separating the prayers and refiling it as sought by the applicant."

I have passionately gone through the rival written submissions of both parties in this application as well as all the authorities cited thereto. In my view, the issue for my determination is whether the present application is competent before this court.

It is very important to note at this stage, that there is no law in our jurisdiction which prohibits combination of prayers in one application, as it was stated in the case of **MIC Tanzania Limited** (supra). However, not all prayers can be allowed to be combined in a single application; there are conditions that must be fulfilled first.

The same were stated in a number of cases including, but not limited to the cases of **Zitto Zuberi Kabwe & 2 Others vs. Attorney General**, Misc. Civil Cause No. 31 of 2018 and **Amos David Kassanda vs Commissioner for Lands and Another**, Misc. Land Application No. 457 of 2020, HCT at Dar es Salaam (unreported). In the former case, it was stated that:

> *"Combining prayers in one application is not bad although there are considerations that must be made in deciding whether or not the combination is proper. Such considerations are **one**, whether there is a specific law barring combination of more than one prayer. **Two**, whether the prayers are those which can properly be*

*combined in one application. And **three** dictates of peculiar circumstances of a case." [the emphasis is mine]*

In my view, those conditions must exist in order for the application with two or more prayers to be considered lawful. In other words, the said considerations must all exist, otherwise the application will be labelled to be an omnibus one.

The above court's position is fortified in the case of **Amos David Kassanda** (supra) where my learned brother Makani, J had the following to say:

"It is a general principle of the law that an application which is composed of two or more unrelated applications may be labelled omnibus and consequently struck out for being incompetent"

The above decision of the court has categorised the omnibus application as the application which contains two or more **unrelated** application. Also, at page 1239 of **The Black's Law Dictionary**, Revised 4th Edition, The Publisher's Editorial Staff, ST. Paul, MINN. West Publishing Co. 1968, the word *"Omnibus"* has been defined as follows: -

*"Omnibus; for all; containing two or more **independent matters**."*

From the above definitions, it is apparent that omnibus application is the kind of application which contain two more unrelated or independent prayers. It is opposite to the one which contain a combination of two or more interrelated prayers or applications, as it was stated in the case of **Amos David Kassanda** (supra) that:

> *"...an application comprising two or more applications which are interrelated is allowable at law."*

By simple construction, the word *"interrelated"* entails something which relates to the other and it is the opposite of the word *"unrelated"* or *"independent"* which is normally featured in an omnibus application.

Now reverting back to the present case, it is the submission of the counsel for the applicant that the present application is not bad in law.

According to him, there are two main factors this court are supposed to take into account by the court while determining the present application. First, he is of the view that in essence; the application contains only one prayer which according to him, is ***"the applicant to be granted leave and certificate of point of law"***, and the second for court's consideration, is that even if it will be ruled out that the applicant's chamber summons contain a combination of two prayers, yet according

to him, the same are not specifically barred by the law as they do not oppose to each other.

The above bolded words describing the applicant's application, are not mine; they are from the applicant's counsel. If I have understood the applicant's counsel properly, he has done so in order to make an emphasis regarding the above excerpt. He has gone far at page 1 of his written submission, by contending that semantically; those are not two prayers. In other words, he is of the view that the filed chamber summons contains a single prayer. Is that so?

With all due respect to the learned counsel for the applicant, it appears to me that he has confused himself in such interpretation; hence, I am constrained to answer that question negatively. This is because at one point, the learned counsel seems to hold the view that the instant application contains a single prayer, but on the other, he has used the pronoun *"these"* to deny the fact that the there are two prayers in his client's chamber summons.

Grammatically, the word *"these"* is a demonstrative pronoun which is normally used to indicate grammatical number in plural form and sometimes, it may be referred to as *"those"*; it is the opposite of the word *"this" or "that"* which is normally used in a sentence to refer to

grammatical singular. That alone, entails that by using the words *"these"* or *"those"* in his submission, the applicant's counsel, is in agreement with the respondent's position who has contended that the present application contain two prayers.

Coming to the consideration, I agree with Mr. Budodi that an application which contain a combination of two or more prayers may be granted by the court, as it was stated and encouraged by the Court of Appeal in the case of **MIC Tanzania Limited** (supra). However, as I have alluded herein above, that is not an automatic certificate to have the said prayers combined in one application.

Therefore, the court which is placed in a position to determine the application of that kind, is bound to consider all the three factors as stipulated in the case of **Zitto Zuberi Kabwe & 2 Others vs. Attorney General** (supra). The first one is whether there is a specific law barring combination of more than one prayer.

As I have pointed above, there is no law which prohibits a combination of more than one prayer in an application. Hence, the above first consideration is found to be existing.

The second consideration is whether the prayers contained in the applicant's chamber summons are those which can properly be combined in one application.

The chamber summons in this application, contains two prayers namely **leave** and **certificate certifying points of law for the applicant to appeal to the Court of Appeal of Tanzania**. The court's records show that the intended appeal which has led to the filing of this application, originates from the Ward Tribunal.

In the circumstance, it is a requirement of the law that the applicant who wants to become an intended appellant, is supposed to seek two orders from this court, as per the provisions of section 47 (1) (2) of the Land Disputes Court Act, Cap 216 R.E. 2019 (the Land Disputes Court Act) which provides that:

> *"Appeal from the High Court (Land Division)*
>
> *(1) Any person who is aggrieved by the decision of the High Court (Land Division) in the exercise of its original, revisional or appellate jurisdiction, may with the leave from the High Court (Land Division) appeal to the Court of Appeal in accordance with the Appellate Jurisdiction Act.*

(2) Where an appeal to the Court of Appeal originates from the Ward Tribunal the appellant shall be required to seek for the Certificate from the High Court (Land Division) certifying that there is point of law involved in the appeal."

From the above provisions of the law, the first requirement for the applicant who wants to appeal to the Court of Appeal from the decision of the High Court which stem from the ward tribunal, is to apply for an order seeking for leave to appeal to the Court of Appeal, and the second is to get a certificate from the High Court that a point or points of law are involved in the matter for the determination of the Court of Appeal.

While the above first requirement is governed by section 47(1) of the Land Disputes Court Act which makes an external reference to the provisions of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 (the AJA) particularly section 5 (1) of the AJA, the second is governed by section 47 (2) of the Land Disputes Court Act.

Looking on the above legal requirements, it is obvious that they are governed by different provisions of the law. In the case of **Amos David Kassanda** (supra), this court (**Makani, J.**) was confronted with similar situation and it resolved the issue of prayers emanating from different provisions of the law, as follows: -

"In that regard, ***the application is peculiar in nature in that the prayers therein though might appear to be interrelated, but they are under different provisions of the law,*** *and are also treated different in the manner of filing" [emphasis is mine]*

Also, in the case of **Rutagatina C.L vs The Advocates Committee and Another** (supra), it was held that:

*"****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 is mine]*

From the above authorities, it is clear that although the prayers may appear to be interrelated, still the same cannot be filed in one application, unless they emanate from similar provision of the law. What I have observed in the present application, is that although they appear to be interrelated, the prayers contained in the applicant's chamber summons, emanate from different provisions of the law. In the circumstance, they cannot properly be combined in one application.

Another thing to note from the above prayers, is that while the time frame for the first prayer which is under section 47(1) of the Land

Disputes Court Act, is fourteen days from the decision sought to be appeal from (This is provided under Rule 45 (a) of the Court of Appeal Rules, read together with Section 47 (3) of the Land Disputes Court Act), application in respect of the second prayer requires no time frame.

There is still one more thing to note when dealing with the application of this nature. In my view, what makes the two prayers contained in the applicant's chamber summons peculiar, is that even their considerations are different.

This is because an application for a grant of leave to appeal to the Court of Appeal is usually granted by the High Court if there is good reason, normally on a point of law or on a point of public importance that calls for Court's intervention; See **Rutagatina C.L. vs The Advocates Committee and Another** (supra) and **Lazaro Mabinza v. The General Manager, Mbeya Cement Co. Ltd**, Civil Application to 1 of 1999 (at Mbeya Registry, unreported).

In the latter case it was held thus:

> *"Leave to appeal should be granted in matters of public importance and serious issues of misdirection or non-direction likely to result in a failure of justice."*

On the other hand, an application for certificate on a point of law is usually granted if there is arguable case worth taking to the Court of Appeal and that there are points of law worth consideration by the Court of Appeal; See **Mariam Othman Matekele vs Nyacheri Joseph Mwangwa**, Misc. Civil Application No. 139 of 2021 (unreported) and **Dorina N. Mkumwa vs Edwin David Hamis**, Civil Appeal No. 53 of 2017 (unreported).

For instance, in the case of **Dorina N. Mkumwa** (supra), the Court of Appeal had the following to say regarding application for a certificate on a point of law: -

> *"When the High Court receives applications to certify point of law,* ***we expect Rulings showing serious evaluation of the question whether what is proposed as a point of law, is worth to be certified to the Court of Appeal."*** *[Emphasis is mine]*

From the above authorities, it is obvious that the consideration to be taken by the High Court in determining the application for a certificate certifying a point of law, is quite different to the one to be taken when the High Court is dealing with an application for a leave to appeal to the Court of Appeal.

This again, is a reason why the court is of the settled view that the prayers contained in the chamber summons of the instant applicant herein, are not the ones to be properly combined in one application.

The third test is on the dictates of peculiar circumstances of a case. As I have pointed out above while considering the second test, it is apparent that the circumstances of an application for leave and those for a certificate on a point of law in the case at hand, are peculiar.

In the circumstance, and for the reasons which I have provided above, the present application becomes an omnibus application which is bound to be struck out for being incompetent. However, before winding up, I find it proper to comment a little bit on the style used by the counsel for the applicant in filing the present application.

Having examined the chamber summons, it has come to my mind that the counsel for the applicant cited only **the procedural provision** and omitted to cite the **enabling provision** in that chamber summons. In order to make it clearer, I propose to reproduce the relevant part of the chamber summons, as here under:

"CHAMBER SUMMONS

[Made under Section 47 (3) of the Land Disputes Courts Act, No. 2 of 2002[Cap 216 R.E 2019] ..."

From the above except, it is obvious that subsections (1) and (2) of section 47 of the Land Disputes Courts Act were deliberately omitted by the counsel for the applicant and it is not told why he decided to do that which in my opinion, leaves a lot to be desired in the applicant's application because up to that moment, it is unknown his application is made under which enabling provision of the law.

Section 47 (3) of the Land Disputes Courts Act provides that:

"The procedure for appeal to the Court of Appeal under this section shall be governed by the Court of Appeal Rules G.N. No. 102 of 1979."*

In my understanding of the above provision of the law, subsection (3) of section 47 of the Land Disputes Courts Act comes into play when reference is made to either subsection (1) of section 47 of the Land Disputes Courts Act, if the intended appellant is applying for a leave of the High Court in the exercise of its original, revisional or appellate jurisdiction, or both subsections (1) and (2) of section 47, if the intended appellant is applying for leave and certificate certifying a point of law

from the decision of the High Court which originates form the Ward Tribunal.

In other words, subsection (3) of the above provision of the law, is a procedural provision of the law which precedes the provisions of subsections (1) and (2) of section 47; hence, it cannot be read in isolation, depending on the circumstance of each case.

In the case of **Amin Nathanael Mcharo vs Tanzania Electric Supply Limited**, Misc. Civil Application No. 196 of 2019 (unreported) my brother Kulita,J., had an opportunity to define and distinguish between the **enabling** and **procedural provisions** of the law which I think will be useful to make my point clear. It was stated therein that:

> *"The **enabling provision** is that which allows the applicant to make the application he has made or he intends to make. **The procedural provision** is the section which provides the mode/procedure in which the application should be made. In making citation not only the procedural provision but also the enabling provision of the law should also be cited." [the underlined is mine]*

Having said the above, I am of the considered opinion that failure by the counsel for the applicant to cite the enabling provision in the chamber

summons not only made the applicant's application incomplete, but also made the entire application incompetent.

That apart, it was the submission of the applicant's counsel that should the court find that the application is misconceived, then since the issue was raised *suo motu* by the court, the remedy thereto is to allow the applicant to amend the application.

It is unfortunate that the case of **Alaf Limited** (supra) cited by the applicant's counsel in bringing such prayer for amendment, is distinguishable to the circumstances of the instant case because in that case the irregularity was caused by the court, but in the present case, it is the applicant's counsel who had a hand on it.

In the upshot, it is my conclusive finding that the present application is incompetent before this court for being omnibus. It is consequently struck out with costs.

It is accordingly so ordered.

A. A. MRISHA
JUDGE
11.12. 2023

DATED at **SUMBAWANGA** this 11th day of December, 2023.

A. A. MRISHA
JUDGE
11.12. 2023