

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DAR ES SALAAM DISTRICT REGISTRY**

**AT DAR ES SALAAM**

**MISC.CIVIL APPLICATION NO. 586 OF 2023**

**SAID RASHID HEMED ..... APPLICANT**

**VERSUS**

**NAHLA RASHID HEMEDAND NAJLA**

**RASHID HEMED (As administratrixes of the estate**

**of the late RASHID HEMED KHALFAN) .....RESPONDENTS**

**RULING**

**MKWIZU, J: -**

On 16<sup>th</sup> October, 2023 the applicant filed a chamber summons under sections 79 (1) (a) and ( c) of the Civil Procedure Code, Cap 33 [ R.E 2019] and sections 43 (3) and 44(1) (b) of the Magistrates Court's Act Cap 11 RE 2019 and any other enabling provisions of the law seeking for the following orders:

- i. That his honourable court be pleased to extend time within which the Applicant may lodge this Application for Revisions against the Records, Proceedings, Ruling and Order of the Resident Magistrate Court of Kinondoni at Kinondoni Hon Kiswaga – SRM dated 15<sup>th</sup> September 2021 in Probate and Administration Cause No 43 of 2021*
- ii. That upon grant of the extension of time as per prayer (i) above, this Honourable Court be pleased to call for an examine the Records,*

*Proceedings, Ruling and Orders of the Resident Magistrate Court of Kinondoni at Kinondoni in Probate and Administration Cause No 43 of 2021, revise and quash the said proceedings and make such other order as it deems fit including restoration of deceased's property into the name of the deceased*

*iii. That this Honourable court be pleased to make any other order as it may deem fit.*

The application is supported by the applicant's affidavit. However, the respondents, through their advocate Magreth Maggebo have objected this application on two main points.

- 1. The application is incompetent for containing omnibus prayers.*
- 2. Application is bad in law for not containing enabling provisions for extension of time.*

The objections were thus disposed of by way of written submissions.

Respondents advocate, Ms Magreth submission were that the applicant's application contains two distinct prayers that necessitate separate considerations and stem from different legislation, that is, extension of time, governed by the Law of Limitation Act, Cap. 89 [R.E 2019] and revision of Probate and Administration Cause No. 43 of 2021 governed by the Civil Procedure Code, Cap. 33 [R.E 2019]. She referred the court to the definition of an omnibus application as defined in **UDA Rapid Transit Public Limited Company and Shirika la Usafiri Dar es Salaam Limited vs DAR Rapid Transit Agency, Misc. Commercial Application Cause No. 81 of 2018,( unreported)** where it was held that *"Omnibus application entails two distinct applications which are*

*made in one application"* asserting that several Court of Appeal including **Rutagatina CL versus Advocate Committee & Another, Civil Application No. 98 of 2010 ( Unreported)** has discouraged the practice of filing omnibus applications that combine multiple unrelated claims, particularly when (i)the claims are based on different provisions of law, (ii)each claim requires distinct considerations for its assessment and (iii)the claims fall under different jurisdictions.

She reasoned that extension of time revolves around demonstrating sufficient reasons for delay or "good cause," while revision requires evidence of misconduct, procedural errors, or material mistakes leading to injustice for the Applicant contending that combining these unrelated issues in one application can cause confusion and potentially prejudice the Respondents.

This advocate was keen enough to acknowledge that the law does not bar the combining of prayers in one application, but it bars unrelated prayers in a single application. She was of the view that for the prayers to qualify to be lumped in a single application they should not be diametrically opposed to each other's or preferred under different laws, complete with different timelines and distinct considerations in their determination". A decisions in **Rutunda Masole v Makufuli Motors Limiteil**, Misc. Labour Application No. 79 of 2019 ( Unreported) was cited on this point. She maintained that the prayers in this application are not similar to fit in the test pronounced above. She lastly urged the court to strike out the application with costs.

In response, the appellants learned advocate submitted that omnibus prayers are not bad in law as held by the Respondents to be, rather it is

the best practice to go about prayers which are not diametrically oppose each other but one easily follow the other and which are grantable by the same court/ same judge with the requisite jurisdiction. He contended that the prayers in this application are not diametrically opposite to each other, but one follows the other and they can conveniently be tried and disposed of before the same forum and the same judge; they abhor multiplicity of applications and they save time and costs. A number of decisions including that of **Tanzania Knitwear Ltd v Shamshu Esmail** [1989] T.L.R 48, **MIC Tanzania Limited Vs Minister For Labour And Youth Development And Attorney General**, Civil Appeal No. 103 of 2004 the Court of Appeal of Tanzania at Dar Es Salaam; **The Registered Trustees of the Evangelical Assemblies of God (T) (EAGT) V Reverend Dr. John Mahene**, Civil Application No. 518/4 of 2017, **First Assurance Co. Ltd v Aron Kaseke Mwasonzwe and ZHI Yuan International Transport Group Co. Ltd**, Civil Revision No. 1 of 2020, **Gervas Mwakafwila & 5 others v The Registered Trustees of Moravian Church in Southern Tanganyika**, Land Case No. 12 of 2013( all unreported) advising the court to find guidance on the doctrine of *stare decisis* which dictates that similar cases should be decided similarly, and find the application properly before the court.

Seemingly in the alternative, the applicants counsel submitted that, should the court find the prayers incompatible, which is not the case, the second prayer should be ignored and the court should proceed to decide on the first prayer for extension of time. The learned counsel was of the view that the case of **Rutunda Masole v Mkufuli Motors Limited (Supra)** referred to by the Respondent's counsel is distinguishable much

as the present application is concerned because while it is pegged on and deliberative of the matters of labor a set of legal discipline governed by a distinct set of laws, the present application emanates from a probate legal discipline, the two of which require a distinct consideration.

The applicant's advocate was keen enough to admit that there is an inadvertent none citation of Section 14(1) of the Law of Limitation Act Cap. 89 of 2019 which is enabling provision for an application for extension of time, but was quick to add that such an omissions is not fatal . He on this relied on **Rejoice Philipo Puka and 2 others v Priscar John Mjindo, Misc.** Civil Application No. 334 of 2022, **Petro Magori v Four Seasons Safari Lodge** Application No. 31 of 2019,( all unreported) and he prayed for the overruling of the preliminary objection with costs.

Rejoining, the respondents counsel argued that though the applicant cites various court decisions allowing omnibus prayers granted by this esteemed court, he overlooks a crucial distinction. The allowed instances involve compatible and interlinked prayers stemming from the same legal framework encourages to avoid multiple proceedings and conserve judicial time. Conversely, the revision and extension of time prayers sought in this application are distinct matters not amenable to the omnibus format.

I have thoughtfully considered the parties' arguments for and against the presented preliminary objections. I should state from the outset that the 2nd preliminary objection is without merit. It is settled that an omission to cite an enabling provision is not fatal. I need not cite any authority for this.

The court is called upon in the first preliminary objection to test if the prayer in this application matches to be combined in one application or not. As rightly submitted by the respondent's counsel, the law bars a lumping of more than one prayers in an application only where the said prayers are diametrically opposed to each other's with different timelines and diverse considerations in their determination.

In this application two prayers have been tabled for this court's consideration, one is extension of time to file revision and revision application upon grant of the first prayer. In other words, the court is firstly invited to look into whether the applicant has sufficient reasons for the delay, and the second prayer would only come in if the first application passes the tests set by the law. With due respect to Ms Magreth, I find it difficult to follow her arguments that the two prayers are diametrically opposed. In fact, the two prayers are so intersected such that granting of the first one takes the court to another application and this will remain so even if the two prayers were to be brought through separate chamber summons. Luckily, this is not a virgin area in our jurisdiction. While considering an issue of combination of prayers in **Tanzania Knitwear Ltd Vs Shamshu Esmail** ( Supra), the court held that combination of the two applications is not bad at law since courts of law abhor multiplicity of proceedings. This position with the cited case of **MIC Tanzania Limited Vs Minister For Labour And Youth Development And Attorney General**( supra) where the Court of Appeal held t:-

*"...if the position he took is sustained on only those grounds, it would lead to undesirable consequences. 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. Therefore, unless there is a specific law barring the combination of more than one prayer in one Chamber Summons, the Courts should encourage this procedure rather than wait it for fanciful reasons".* (Emphasis supplied).

The combination of the two prayers in this application is more efficient not only for the parties but also for the court, which is to determine the two prayers sequentially regardless whether they are combined or not.

The court is thus satisfied that the application is proper before the court. Both preliminary objections are overruled. The application is ordered to proceed on merit.

**Dated at Dar es salaam, this 19<sup>th</sup> Day of December 2023**



***E. Y Mkwizu***  
***Judge***  
***19/12/2023***