

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 634 OF 2016**

**AYUBU SALEHE CHAMSHANA.....1<sup>ST</sup> APPLICANT  
SOUD SALEHE CHAMSHANA.....2<sup>ND</sup> APPLICANT  
ESHE KHAMIS.....3<sup>RD</sup> APPLICANT**

***VERSUS***

**DIAMOND TRUST BANK TANZANIA LIMITED....1<sup>ST</sup> RESPONDENT  
RHINO AUCTION MART COMPANY LTD.....2<sup>ND</sup> RESPONDENT  
SAC HOLDING LTD.....3<sup>RD</sup> RESPONDENT  
ABDALLAH H. ABEID T/A TAMBAZA AUCTION  
MART & GENERAL BROKERS.....4<sup>TH</sup> RESPONDENT**

**R U L I N G**

*Date of Last order: 26/2/2018*

*Date of Ruling: 4/5/2018*

**MGONYA, J.**

The Applicants **AYUBU SALEHE CHAMSHANA, SOUD SALEHE CHAMSHANA** and **ESHE KHAMIS**, through the services of Mr. Mfala, learned Advocate, filed a Chamber Summons praying:-

- i. That Honourable Court be pleased to make an order to grant the Applicants an extension of time to bring this Application;***
- ii. That the Honourable court be pleased to make an order to uplift an attachment and Sale order by Deputy Registrar; and***
- iii. That the Honorable Court be pleased to make an order for stay of execution proceedings pending determination of objection proceeding in Misc. Land Application No. 599 of 2016.***

The Application was supported by an affidavit affirm by **SOUD SALEHE CHAMSHANA.**

The Application could not proceed as smooth as it could have been expected since the 1<sup>st</sup> Respondent through services of Mr. Bethuel learned Counsel raised notice of Preliminary Objection which has been filed on 16<sup>th</sup> March, 2017.

The point of objection reads:-

***"The Application is incurably defective for being an omnibus Application."***

On 26<sup>th</sup> February, 2018 upon the request made by Mr. Malimi learned Counsel, the Court granted leave to the parties to argue the preliminary objection by filing written submissions.

For the reasons known to themselves the Applicants have not filed the reply to written submission in opposition of the preliminary objection. It follows therefore I will proceed to determine the matter in absence of the reply written submission by Applicants.

The essence of the submission by Mr. Bethuel is that the Application is incurably defective for being **omnibus** since the Applicants have asked for several distinct prayers which is supported by one affidavit.

The learned Counsel has referred me the decision of the court of Appeal of Tanzania which discourages the practice of mixing up several distinct prayers in one chamber summons. The cases cited are ***ALPHONE BUHATWA VS. JULIETH RHODA ALPHONCE, Civil Application No. 19 of 2013*** and ***RUTAGATINWA C. L. VS. THE ADVOCATES COMMITTEE AND ANOTHER, Civil Application No. 93 of 2010.***

In view of the above, the learned Counsel pressed this court to struck out with costs the present Application for being omnibus.

Now, I had glanced at the Chamber Summons filed or used by the Applicants to move this court to grant the order or reliefs sought, and indeed had found it is incorrect and unacceptable at law as correctly submitted by the 1<sup>st</sup> Respondent's Advocate.

It is quite true in law that an Application for extension of time, an Application for uplift an attachment and sale and an Application for stay of execution proceeding **cannot be joined or lumped up together in one Chamber Summons** due to the following reasons.

First, under the relevant provisions of the law an Application for extension, an Application for uplift an attachment and sale and an Application for stay of execution **are made differently.**

**Second,** in determining both Applications, the considerations to be taken into account are different.

**Third,** the time frames within which to prefer the Applications are also different.

Thus I entirely subscribe to the submission of the 1<sup>st</sup> Respondent's Advocate that the Application for extension of time, Application to uplift an attachment and sale and an Application for stay of execution cannot be combined or simultaneously made in the same Chamber Summons.

With transparent conviction, it is therefore harmful irregular and improper for the present Application to mix up the mentioned prayers in one Chamber Summons.

The Highest Court of the Land in number of unbroken chain of authorities has propounded and discourage the practice of mixing up or lumped distinct prayers in one Chamber Summons. See the case

of **JOVIN MTAGWABA & 85 OTHERS VS. GEITA GOLD MINING LTD, Civil Appeal No. 23 of 2014.**

Now, since the present Application contains several distinct prayers in one Chamber Summons as day follows night, the present Application is hereby declaration improper and incorrect in a format.

For the reasons stated above, it is this Application which is found to be incompetent and the only and deserve remedy obvious and of course is **striking out;** and I hereby **struck it out.**

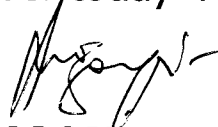
The 1<sup>st</sup> Respondent deserve costs.

It is so ordered.



**L. E. MGONYA**  
**JUDGE**  
**4/5/2018**

**COURT:** Ruling delivered in the presence of the Applicants, Advocate Tarzan for 1<sup>st</sup> and 2<sup>nd</sup> Respondents and Ms. Emmy B/C in my chamber today 4<sup>th</sup> May, 2018.



**L. E. MGONYA**  
**JUDGE**  
**4/5/2018**