

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

MISC. LAND CASE APPLICATION NO.109 OF 2020

(Originating from Land Appeal No. 224 of 2016)

GEOFREY SHOO.....1ST APPLICANT

STELLA SHOO.....2ND APPLICANT

VERSUS

MOHAMED SAID KITUMBI.....1ST RESPONDENT

THE EXECUTIVE DIRECTOR PF KINONDONI

MUNICIPAL COUNCIL.....2ND RESPONDENT

MOHAMED SAID KITUMBI (The guardian of

Mtumwa Mohamed Kitumbi).....3RD RESPONDENT

RULING

OPIYO, J.

Mr. & Mrs. Shoo, the two applicants here in above, jointly and together are seeking for an extension of time from this court for them to apply for leave to appeal to the court of appeal of Tanzania against the ruling and order of Hon. Ndunguru J dated 21st day of June 2019. They also requested the court to grant leave to appeal to the court of appeal after allowing the extension of time which is the 1st prayer in their chamber summons. This application came under section 11(1) of the Appellate Jurisdiction Act, cap 141 R.E 2019 and section 47 (2) of the Land Disputes Courts Act cap 216 R.E 2019. It is supported by the affidavit of Mwangeza

Mpambe, their learned Attorney. However, the 2nd respondent, The Executive Director of Kinondoni Municipal Counsel, through the services of Mr. Jeremiah Odinga, Municipal Solicitor has objected this application for being an omnibus. The objected was thus disposed by way of written submissions.

In his submissions, Mr. Jeremiah maintained that, although there is no law which forbids combining two or more prayers in an application as noted in the case of **Tanzania Knitwear Limited versus Shamshin Esmail [1989]**, but the rule is clear that the prayers must be within the same provision, short of that the application becomes incompetent. He argued that, the instant application is omnibus, as it contains two distinct prayers which are provided under different provisions. It should therefore be dismissed, he submits. He cited a number of cases to support his arguments, among them being the case of **Ally Abbas Hamis versus Najma Hassan Ally Kanji, Misc. Land Application No. 140 of 2017, High Court Land Division at Dar Es Salaam (unreported)**, where it was observed that

"...lumping of several prayers in a single application which those prayers are also different; and the considerations to be taken into account are different, the conclusion is not hard to find, but to conclude that the application is omnibus and from the same reason I have no other option than to struck out with costs the omnibus application."

In reply, the applicants' counsel was of the view that, the objection by the 2nd respondent was improperly raised as it was pleaded in the counter affidavit contrary to Order XIX Rule 3(1) of the Civil Procedure Code Cap 33 R.E 2019 which requires affidavits to contain only facts which the

deponent is able of his own knowledge to prove. The 2nd respondent's counter affidavit contains matters of law therefore its appropriateness is questionable. The court should dismiss the said objection, he submits.

He went on to argue that, the objection is misplaced and lacks merits since the application for extension of time and that of leave to appeal are made under section 11(1) of the Appellate Jurisdiction Act and section 47 (2) of the Land Disputes Courts Act respectively and both laws are applicable in the High Court. Therefore, the combination of two prayers as in the instant application cannot be fatal, what the court needs to do is to determine the application for extension of time and if granted then it will proceed with the determination of the application for leave. He urged this court to invoke the application of the overriding objective principle and do away with the technicality in question. He referred to the case of **The Project Manager ES-KO International Inc Kigoma versus Vicent J. Ndugumbi, Civil Appeal No. 22 of 2009, (unreported)** where it was observed that:-

"The application for extension ought to have been determined first and if granted, the application for leave would have been considered and determined accordingly in the same ruling."

In rejoinder, the 2nd respondent's counsel maintained that, the objection is not part of the counter affidavit as the same is not contained in the verification clause. It is therefore clear that the counter affidavit is free from any defect and is according to the required rules cited by the applicants' counsel. He insisted that the application is fatally defective and the overriding objective rule cannot cure the same as discussed in the case of **Puma Energy Tanzania Limited versus Ruby Roadways (T)**

Limited, Civil Appeal No.3 of 2018, Court of Appeal of Tanzania at Dar es Salaam(unreported).

Having considered the rivalry submissions from the learned Advocates for both sides, the issue worth of determination at this juncture is whether the objection has merit or not. I will start my discussion by the stating categorically that, there is no law in our jurisdiction providing procedures on how objections should be presented. What matters is the fact that is should be on point of law and not facts and should be raised at the earliest possible time {see **Mukisa Biscuits Manufacturing Co. Ltd. Vs West End Distributors Ltd. (1969) EA 696**}. The contention by the applicant's counsel that the instant objection be disregarded for being improperly raised as it was included in the counter affidavit is a misconception, as rightly argued by the 2nd respondent's counsel. It is true it was improperly raised, but that alone does not constitute sufficient reason for disregarding the same. Especially because, though embedded in the affidavit but its part was not included in the verification clause. Therefore, technically, it is not part of the counter affidavit though in ordinary eyes it may seem to be part of it.

Back to the merit of the objection, it is a common understanding that two or more independent matters cannot go together in one application, unless they are interrelated and can conveniently be jointly determined by the court (see **Tanzania Knitwear Limited versus Shamshin Esmail [1989] supra, Ally Abbas Hamis versus Najma Hassan Ally Kanji, Misc. Land Application No. 140 of 2017, High Court Land Division at Dar Es Salaam (unreported) supra, Daudi Lengiyeyu versus Dr. David E. Shungu Civil Appl. No. 28 of 2015 and Bibie Hamed Khalid versus Mohamed Enterprises Ltd and Two others,**

Civil Appl. No. 6 2011 , (both unreported)). It appears therefore that, as per the above listed authorities, the only test for an omnibus application to stand in court is the fact that the prayers so stated in the chamber summons are interrelated and capable of being jointly determined.

From the face of it, the two prayers in the applicants' chamber summons are not related. There is an application for extension time which aims at allowing the applicants to pursue their intended course out of time. The intended course in this case is the application for leave to appeal to the Court of Appeal of Tanzania. Therefore, an application for extension of time should have come first and separate from the intended course. This is because the extension of time is the one, if granted, gives the applicants the greenlight for further actions, i.e. filing an application for leave to appeal to the Court of Appeal (**see Khalid Simba versus L.H. Maleko, Land Revision No. 23 of 2019, High Court Land Division, at Dar ES salaam (unreported)**). In my opinion separating the two prayers in the case at hand, each in an independent application is vital and inevitable. The purpose is simple, that is to help the court and the parties to have focus on the specific issues that need to be determined. Combining the two independent prayers in one chamber summons in this case affects the competence of the whole application as rightly observed by **Msofe J.A (as he then was) in Mohamed Salimin versus Jumanne Omary Mapesa, Civil Application No.103 of 2014, Court of Appeal of Tanzania, at Dodoma, (unreported)**, that:-

" There is one other difficult relating to this application. 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 liable to struck out”.

This being a defect that goes to the root of the case itself, I will dissociate myself with the application of the overriding objective rule to cure the mistake as needed by the applicants’ counsel in his reply submissions. This application is therefore struck out with no order as to costs.



A handwritten signature in blue ink, appearing to be "M. P. Opiyo", written over a horizontal line.

**M. P. OPIYO,
JUDGE
11/12/2020**