

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

MISC. LAND APPLICATION NO. 457 OF 2020

AMOS DAVID KASSANDA.....APPLICANT

VERSUS

**COMMISSIONER FOR LANDS.....1ST RESPONDENT
ATTORNEY GENERAL.....2ND RESPONDENT**

Date of Order: 19.04.2021
Date of Judgment: 17.05.2021

RULING

V.L. MAKANI, J

This ruling is in respect of the preliminary objection on a point of law raised by the respondents that:

"The application is bad in law for containing omnibus prayers".

With leave of the court the preliminary objections were argued by way of written submissions.

Ms. Gati Museti, learned State Attorney submitted on behalf of the respondents that the application is fatally defective for containing omnibus prayers. She said the present application contains multiple prayers which are not related as they involve distinct set of laws,

procedure, and criteria for determination. She went on saying in an application for extension of time the applicant needs to adduce sufficient factual reasons including accounting for each day of delay, while application for review the court need to ascertain if there is an error on the face of record. Learned State Attorney pointed out that the applicant ought to have applied and be granted extension of time before seeking for review. She said the application contains peculiar circumstances to the effect that the distinct nature of the prayers is likely to lead to incompatible outcomes if granted. Ms. Gati relied on the cases of **Rutagatina C.L. vs. The Advocates Committee & Clavery Mtindo Ngalapa, Civil Application No. 98 of 2010 (CAT-DSM)** (unreported), **Mohamed Salmin vs. Jumanne Omary Mapesa, Civil Application No. 103 of 2014 (CAT-Dodoma)** (unreported), **Zaidi Baraka & Another vs. Exim Bank (T) Limited, Misc. Commercial Application No. 28 of 2015 (HC-Commercial Division, DSM)** (unreported) and **Zitto Zuberi Kabwe & 2 Others vs. Attorney General, Misc. Civil Cause No. 31 of 2018 (HC-Main Registry, DSM)** (unreported). She concluded that the omnibus application is improperly before the court and prayed for the same to be dismissed with costs.

In response the applicant said the cases cited by the learned State Attorney are distinguishable because they were all dealing with the Court of Appeal Rules. He said Article 107A (2) (e) of the Constitution of the United Republic of Tanzania takes precedence as courts are argued not to be tied down by unnecessary technicalities. He further said that combination of two application is not bad at law as courts abhor multiplicity of proceedings in courts as was stated in the case of **Tanzania Knitwear Limited vs. Shamshu Esmail (1989) TLR 48** which was confirmed by the case of **MIC Tanzania Limited vs. Minister for Labour and Youth Development, Civil Appeal No. 103 of 2004** where the Court of Appeal stated that the arguments by the respondents are untenable in the eye of the law and prayed for the preliminary objection to be dismissed.

In rejoinder, Ms. Gati reiterated what she stated in the main submissions and emphasized that the cases cited are binding on the lower courts. She further said the application for extension of time is initiated by a chamber summons supported by an affidavit while the application for review is provided under Order XLII Rule 5 of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**). She maintained that joining such distinct applications in an omnibus application is bad in

law because among other things it defeats the purpose of the law of preferring an application for review. She said the present application contains peculiar circumstances to the effect that the distinct nature of the prayers is likely to lead to incompatible outcomes if granted. She reiterated the prayer for the application to be dismissed with costs.

I have gone through the submissions by the parties. The main issue for consideration is whether the application is properly before the court.

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 case of **Rutagatina C.L.** (supra) is relevant. On the other hand, an application comprising two or more applications which are interrelated is allowable at law. This issue was well discussed in this court in **Tanzania Knitwear** (supra) and confirmed by the Court of Appeal in the case of **MIC Tanzania Limited** (supra). Elaborating on this, my brother Hon. Masoud, J in the case of **Zitto Zuberi Kabwe** (supra) said:

"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 present application is peculiar in that the prayers combined are not interrelated as they are filed differently. While an application for extension of time under section 14(1) of the Law of Limitation Act is filed by way of a Chamber summons supported by an affidavit (Order XLIII Rule 2 of the CPC) the application for review is by way of a Memorandum of Review made Order XLII Rule (1) and (3) of the CPC. Memorandum of review is supported by grounds of review. The affidavit is evidence on oath while the grounds of review require further proof to show the propriety of the said application. In such circumstances the prayers cannot be combined in one application as the grounds of review cannot be raised in an affidavit and vice versa. In that regard, the application is peculiar in nature in that the prayers therein though they might appear to be interrelated, but they are under different provisions of the law and are also treated differently in their manner of filing. Consequently, the prayers are not compatible

and thus cannot be lumped together. The application is therefore not properly before the court.

In the result, the preliminary objection on the point of law is sustained and the application is struck out with costs.

It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
17/05/2021