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

MISC. LAND CASE APPLICATION No.428 OF 2020

IBRAHIM SEIF CHUBI (Administrator of the Estate of the late MOHAMED CHUBI) .....**APPLICANT**

VERSUS

HAWA MOHAMEDI CHUBI.....1ST RESPONDENT
SEVERIN SHIRIMA.....2ND RESPONDENT

Date of last Order: 23.06.2021
Date of Ruling: 26.07.2021

RULING

V.L. MAKANI, J

This is the ruling in respect of the preliminary objection raised by the respondents that.

> *"This Honourable Court has no jurisdiction to entertain this application."*

The court ordered the application to be argued by way of written submissions. Mr. Edward Chuwa, Advocate drew and filed submissions on behalf of the respondents; while the applicant drew and filed his own submissions.

Submitting in support of the preliminary objection. Mr. Chuwa said that section 5 (1) (c) and section 11(1) of the Appellate Jurisdiction Act CAP 141 RE 2019 **(AJA)** under which this application has been

brought is for the purpose of moving the court to extend time for leave to appeal to the Court of Appeal. He said that in the Chamber Summons the applicant is desiring to apply for revision and not appeal. He insisted that section 11 (1) of AJA does not apply in an application for revision. He said such jurisdiction is vested in the Court of Appeal and therefore the application ought to be dismissed.

In reply, the applicant conceded to the fact that this application has been brought under section 5 (1) (c) and 11(1) of AJA which empowers the court to extend time for the applicant to appeal to the Court of Appeal. He conceded that those provisions do not call for revisionary jurisdiction of the court. He however stated that leave to appeal to the Court of Appeal is reflected in paragraph 7 of his affidavit, and the inclusion of the word revision in the Chamber Summons is a mere slip of the pen. He relied on the case of **Alliance One Tobacco (T) Ltd and Hamis Shoni vs Mwajuma Hamis and Heritage Insurance Co. Ltd, Civil Application No.803 of 2018 (HC-DSM)** (unreported) where the applicant was allowed to insert proper enabling provision of the law through handwritten form. He argued the court to strike out of the word *"revision"* and insert *"leave to appeal"* as the respondent will not be prejudiced and further taking into account that he is a layman.

In rejoinder, Mr. Chuwa reiterated his main submissions and added that, the case of **Alliance one Tobacco** (supra) is distinguishable from this case simply because the decision is on the wrong citation of the enabling provision whereas in this present case the applicant is

seeking for an order which this court has no jurisdiction. That the affidavit is just a supporting document of what has been asked in the Chamber Summons. He said it is contrary to the law and practise to call upon the court to fish out orders sought in the affidavit instead of the Chamber Summons; and further that the prayer to substitute the words *"revision"* with *"leave to appeal"* is tantamount to a prayer for amendment which at this stage would be contrary to the settled principle of the law that once a preliminary objection has been raised no amendment can be done as it is of the effect of defeating the preliminary objection. He cited the cases of **Mary John Mitchell (Legal Representative of Isabela John) vs. Sylvester Magembe Cheyo & Others, Civil Application No. 161 of 2008 (CAT-DSM)**(unreported), **Method Kimomogoro vs. Board of Trustees TANAPA, Civil Application no. 1 of 2005 (CAT-Arusha**)(unreported) and **Damas Ndaweka vs. Ally Said Mtera, Civil Appeal No. 5 of 1999 (CAT) (unreported).**

The main issue for determination is whether the preliminary objection raised by the respondents has merit.

It is apparent from the submissions by both Mr. Chuwa and the applicant that the orders sought for in the Chamber Summons and the legal provisions cited do not correspond. In that, the orders in the Chamber Summons are for enlargement of time to file revision while in essence the provisions cited are that for extension of time and leave to appeal to the Court of Appeal rather than the orders for revision

presently sought for. The applicant in conceding to this error, prayed that the word *"revision"* be substituted by the word *"leave to appeal"* pointing out that wrong provision can be cured by inserting the correct enabling provision. However, from the outset it is settled law that once a preliminary objection is raised it cannot pre-emptied by any action from the other party. I subscribe to the cases cited by Mr. Chuwa, namely, the case of **Method Kimomogoro** (supra), **Mary John Mitchel** (supra) and **Damas Ndaweka** (supra) where it was emphasized that, the court will not tolerate the practice of trying to pre-empt a preliminary objection by raising another preliminary objection or trying to rectify the error complained of. In the present application, if the court allows the rectification of orders sought in the Chamber Summons as suggested by the applicant it would be pre-empting the preliminary objection raised which is contrary to the law.

Further and without prejudice to what is stated above, looking at the Chamber Summons, the sections 5(1) (c) and 11 (1) of the Appellate Jurisdiction Act, RE 2009 preferred by the applicant in the Chamber Summons deal with appeals, leave to appeal and extension of time to appeal to the Court of Appeal. However, the power to extend time in respect of an application for revision as sought in the present

application is with the Court of Appeal under Rule 10 of the Court of Appeal Rules as amended which states:

> *"The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."*

On the issue of wrong citation of enabling provision, I agree with Mr. Chuwa that the case of **Alliance one Tobacco** (supra) is distinguishable with the case at hand because in **Alliance One Tobacco** the issue was wrong citation of the enabling provision while in this case apart from wrong citation as alleged by the applicant, the main issue is the jurisdiction of this court. As I have endeavoured to explain above, this court lacks jurisdiction to entertain application for extension of time to file revision in the Court of Appeal. In the case of **AMI Tanzania Limited vs. Dorin Donald Darbria, Misc. Commercial Revision No.200 of 2016 (HC-Commercial Division- DSM)**, Hon. Songoro, J cited the case of **Abdul Aziz Suleiman vs. Nyaki Farmers Cooperative Ltd and Another (1966) EA 409** where the Court of Appeal of East Africa observed and emphasized that:

"...the applicant is required to cite the relevant provision from which the Court derives power to hear and determine the application".

In this application, the prayers sought in the Chamber Summons do not give this court jurisdiction to determine the matter and further the enabling provisions cited do not support the prayers.

In the result the application is incompetent, and I proceed to strike it out with costs.

It is so ordered.

V.L. MAKANI
JUDGE
26/07/2021