

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND APPEAL NO. 69 OF 2020

*(Appeal from the District Land and Housing Tribunal for
Kilombero/Ulangu District in Misc. Application No. 58 of 2019)*

LYDYANA YUSTIN MKEKE..... APPELLANT

VERSUS

REMIGI MILEKELO..... 1ST RESPONDENT

AGNETHA LIVANDA 2ND RESPONDENT

YUSTINA LIVANDA..... 3RD RESPONDENT

PROPERTY INTERNATIONAL..... 4TH RESPONDENT

JUDGMENT

T.N. MWENEGOHA, J:

The appellant herein was the applicant in the District Land and Housing Tribunal for Kilombero District ("The Tribunal") in Misc. Land Application No. 58 of 2019 (the application). Whereas the appellant at the Tribunal prayed for the following orders:

- a. That time be extended to permit the applicant file a complaint of having been disposed of her farm following its sale pursuant to the order of this Tribunal in land appeal No. 24 of 2013 and also chamber application no. 185 of 2014.
- b. That where the Tribunal sees fit to so extend the time, fix a day for investigating the applicant's complaint's and summon the

respondents to appear and answer the same and thereafter make such orders as may be just and proper in the circumstance of this case.

- c. That the Tribunal makes a finding that the applicant was a bonafide owner and in possession of the said farm at the time of order of sale by Tribunal.
- d. That the Tribunal finally makes an order to the effect that the applicant be put back in possession of her farm.
- e. That costs of this application follow the event.
- f. Other and further relief as this Tribunal may see fit to grant.

The application was heard by way of written submission whereby the counsel for the applicant raised the point of law suo motto on whether the application was "Omnibus" and concluded that the application was not Omnibus. The 2nd and 3rd Respondents insisted that the said application is "Omnibus". The Tribunal in its finding struck out the application for being incompetent.

Dissatisfied with the decision of The Tribunal the appellant preferred three grounds of appeal namely:

1. That the trial Tribunal erred in law when it held that the application before it was incompetent for being omnibus.
2. The trial Tribunal erred in law and upon facts when it failed to convene a meeting to investigate the propriety or otherwise of the sale by public auction of the appellant's farm in order to satisfy a decree in which she was not the judgment debtor.
3. The trial Tribunal failed to see that this was a fit case in which the doctrine of overriding objective applied.

By an order of the court dated 03/06/2021 it was ordered by Hon. Maghimbi J, that the appeal was to be disposed off by way of written submissions. Now predecessor being transferred to another working station, this appeal has been re assigned to me and upon perusal I find that the submissions are complete and therefore this ruling. In this court, the appellant was represented by learned Advocate J.R Kambamwene while the 2nd and 3rd respondents were represented by Ms. Donatila Teendwa Antoni, also learned Advocate.

In his submission to support the grounds of appeal Mr. Kambamwene admitted that it is true that the application combined application for extension of time to apply for investigation and also application for investigation. He used the same authorities and submission filed at the Tribunal to stress that the application was not omnibus and to him the said applications are interconnected.

In reply Ms. Antoni submitted that since the counsel for the appellant has reproduced the same opinions which were not satisfactory in the Tribunal, she had no other reply from what she had submitted in the Tribunal.

Having heard submissions from both parties the issue for determination is whether the appeal has merits.

Mr. Kambamwene's argument is that the fact that the application for extension of time is entertained under section 14(1) of the Law of Limitation Act while the application for investigation is preferred under Order XXI Rule 98 and 99 of the Civil Procedure Code, this to him means that the substance of the applications are in fact related.

I am in agreement with Ms. Antoni as well as the reasoning of the Tribunal that the application is Omnibus as the application involves prayers from different legislation and the same are not related.

I am aware of the position that the combination of two or more prayers in one application is not bad in law as cited by the appellant in the case of **Tanzania Knitwear Limited v Shamshin Esmail (1989) TLR 48**, but only if the prayers sought in the chamber application are the same or related. The application filed by the appellant herein at the Tribunal is clearly omnibus.

I have also noted that the application was struck out by the Tribunal. The counsel should have refiled the said application as it was found to be incompetent. But to the surprise he preferred this appeal.

The Courts have differentiated orders which are appealable and the one which are not. Msoffe, J.A (as he then was) in the case of **Cyprian Mamboleo Hizza v Eva Kioso & Another, In Civil Application No. 3 of 2010**, CAT at Tanga where he cited the Eastern African Court of Appeal celebrated case of **Ngoni- Matengo Cooperative Marketing Union Ltd. V. Ali Mohamed Osman (1959) EA577** where he said at page 580 thus:

"..... This court, accordingly, had no jurisdiction to entertain it, what was before the court being abortive, and not a properly constituted appeal at all. What this court ought strictly to have done in each case was to "strike out" the appeal as being incompetent, rather than to have "dismissed" it: for the latter phrase implies that a competent appeal has been disposed of, while the former phrase

implies there was no proper appeal capable of being disposed of. (Emphasis supplied)

Msofe, J.A added further that,

"Presumably, if the application had not been dismissed the applicant could have gone back to the High Court and start the process afresh. Since the application was dismissed instead of being struck out, he came to this Court vide Civil Application No.4 of 2009 by way of a "second bite", so to speak."

From the above authorities the fact that the application was struck out it implies that there was no proper application, therefore the applicant had to file the proper application at the same Tribunal, and still there is that room.

Having said that I find the appeal to have no merits and it is hereby dismissed with costs.

It is so ordered.

Dated at Dar es Salaam this 27th day of September, 2021.




T.N. MWENEGOHA
JUDGE