

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

MISC. LAND APPLICATION NO. 412 OF 2021

(Originating from Misc. Land Application No. 495 of 2020 of the High Court Land Division and Land Application No. 11 of 2005 of the District Land and Housing Tribunal)

MERY EMMANUEL MMARI APPLICANT

VERSUS

JAMES CHRISTIAN 1ST RESPONDENT

ABDALLAH SAID MBELWA 2ND RESPONDENT

RULING

A. MSAFIRI, J

The applicant Mery Emmanuel Mmari has filed this Application seeking for the orders that the Honourable Court be pleased to extend time within which she may file application for leave to appeal to the Court of Appeal of Tanzania. Also, that, subject to granting extension of time, the Honourable Court be pleased to grant leave to appeal to the Court of Appeal of Tanzania against the ruling in Misc. Land Application No. 495 of 2020 delivered by Hon. Maghimbi, J on 14th December, 2020.

While filing his counter affidavit, the 1st respondent raised a preliminary point of objection to the effect that the Application combines two different

Auth.

Applications which are governed by different sets of laws. Hence the 1st respondent prayed that the application be dismissed with costs.

By the leave of Court, hearing of the preliminary objection was conducted by way of written submission. For the 1st respondent, the submission was drawn and filed by Benjamin Jonas, learned advocate. He submitted that the application is incompetent and untenable as it combines two different Applications.

In the chamber summons, the applicant is seeking for an order of extension of time to file an Application for leave to appeal to the Court of Appeal under Section 11 (1) of the Appellate Jurisdiction Act Cap 141 R.E. 2019 and an order for leave to appeal to the Court of Appeal under Section 47(2) of the Land Disputes Act, Cap 216 R.E. 2019.

Mr. Jonas pointed that this practice of combining two applications seeking two different reliefs has been abhorred by the Court of Appeal of Tanzania in its several recent decisions. He cited the case of **Juma M. Nkondo vs. TOL Gases Limited/Tanzania Oxygen Limited and another**, Civil Application No. 382/01 of 2019, CAT at Dar es Salaam (unreported). He said that in the referred case, it was held that the combination of an application for extension of time to file an application for leave to appeal to the Court of Appeal with an application for leave would render the Application omnibus thus incompetent and untenable.

Actb.

Mr. Jonas stated that, the Court of Appeal in the case of **Ali Chamani vs. Karagwe District Council & Another**, Civil Application No. 411/4 of 2017 (unreported), it stated that the two applications are found under different pieces of law and therefore they cannot be lumped up together in one application.

He averred that, the effect of combining these prayers for two distinct reliefs in one application is to render the application incompetent and therefore liable to be struck out. He concluded by praying that this Application is bad in law for being omnibus and therefore it should be struck out with costs.

Mr. Augustine Kusalika, learned advocate appeared for the respondent and drew and filed the submission opposing the preliminary objection. He submitted that, the combination of two different sets of law in this application is not fatal so long as this Honourable court is bestowed with jurisdiction to determine the application. He added that both set of the provisions of the law stated in the application empowers this Honourable court to grant the application at hand.

Arguing on the preliminary objection, Mr. Kusalika cited the case of **Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd** (1969) EA. 696 which highlighted on quality and guidance of preliminary objections.

He maintained that, the application is proper before this Court and the same is vested with jurisdiction to determine the application in two different sets of law and two reliefs as demonstrated in the chamber application.

Alle.

Mr. Kusalika submitted that the case of **Juma M. Nkondo s. TOL Gas Limited/Tanzania Oxygen Limited & Another (supra)** is distinguishable from the Application at hand for the reason that the cited case treated the issue of combination of two distinctive reliefs in the same Application to be not proper in law and not the combination of two different Applications which are governed by different sets of law.

He also cited the case of **Selemani Mwanjeka & Another vs. Omary Shabani**, Misc. Land Application No. 1080 of 2016, High Court of Dar es Salaam (Unreported) whereby Hon. Kahyoza, J referred numerous decisions of both High Court and Court of Appeal of Tanzania and associated himself with a school of thought which encourage omnibus applications provided that the reliefs sought are not diametrically opposed to each other. He concluded by praying that the preliminary objection be overruled and the matter proceeds on merit.

On rejoinder, Mr. Jonas reiterated his submissions and added that the central issue is not whether this Hon. Court has jurisdiction to entertain the Application and grant the reliefs sought but the issue is the appropriateness of combining an Application for extension of time within which to appeal to Court of Appeal and an Application for leave to appeal. That this is the practice that has been detested by the Court of Appeal in the referred authorities.

Adls.

Having considered the rivalry submissions from the learned counsels for both parties, the major issue is whether the preliminary objection has merit. 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 the case of **Geoffrey Shoo & Another vs. Stella Shoo**, Misc. Land Application No. 109 of 2020, High Court Land Division (unreported), and the case of **Daudi Lengiyeu vs. Dr. David E. Shungu**, Civil Application No. 28 of 2015 (unreported) and other numerous authorities on the similar position).

It appears therefore that, as per the cited 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.

In the current application, from the face of it, the two prayers in the applicant's chamber summons are not related. There is an application for extension of time which aims at allowing the applicant to pursue her 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.

It is my view therefore that, 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, which gives the applicants the leave

Adls.

for further action that is the filing an application for leave to appeal to the Court of Appeal of Tanzania.

In the case of **Geoffrey Shoo & another vs. Stella Shoo (supra)**, Hon. Judge Opiyo in a similar position observed that;

"Separating the two prayers in the case of 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".

It was also observed by the Court of Appeal in the case of **Mohamed Salimin vs. Jumanne Omary Mapesa**, Civil Application No. 103 of 2014, Court of Appeal of Tanzania Dodoma (unreported), where Msofe J.A (as he then was) was of the view 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 held for time(s) without number, an omnibus application renders the Application incompetent and liable to struck out".

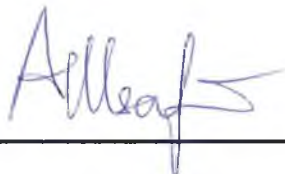
(See also the case of **Rutagatina C.I vs. The Advocates Committee & another**, Civil Application No. 98 of 2020, CAT Dar es Salaam (unreported).

Alle.

This being the defect that goes to the root of the case, I agree with the submissions by the 1st respondent's counsel and find that the application is bad in law for being an omnibus.

I hereby sustain the preliminary objection and struck out the Application with no order as to costs.

Dated at Dar es Salaam this 08th day of December, 2021.



A. MSAFIRI.

JUDGE

