

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

**MISC.LAND APPLICATION NO. 297 OF 2022**

**OMARY ATHUMANI KIUMBO.....1<sup>ST</sup> APPLICANT  
SHABANI ATRHUMANI KIUMBO.....2<sup>ND</sup> APPLICANT  
ALLY SULTAN KIUMBO.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**SEIF KONDO NGOTA.....1<sup>ST</sup> RESPONDENT  
SHABANI SEIF NGOTA.....2<sup>ND</sup> RESPONDENT  
TATU SEIF NGOTA.....3<sup>RD</sup> RESPONDENT  
RAMADHANI SEIF NGOTA.....4<sup>TH</sup> RESPONDENT**

Date of Last Order: 22.08.2022  
Date of Ruling: 16.09.2022

**RULING**

**V.L. MAKANI, J**

This is the ruling in respect of the preliminary objections raised by respondents that:

- 1. The application was made against wrong parties.*
- 2. That the relief sought was not properly prayed by the applicant.*
- 3. That the honourable court has been wrongly moved by the applicants.*
- 4. That the affidavit is intolerable defective.*
- 5. The application was omnibus.*

With leave of the court the preliminary objections proceeded by way of written submissions. The respondents and applicants drew and filed their submissions personally.

Arguing the first point the respondents said that the names of the respondents are different from those appearing in Land Appeal No.72 of 2021. He relied on the case of **Christina Mkimi vs Coca Cola Kwanza Bottlers Ltd, Civil Appeal No.122 of 2008** (unreported)

On the second point of objection, the respondents said the applicants have applied for extension of time to file Notice of Appeal and an application for leave to appeal to the Court of Appeal vide section 11 (1) of the Appellate Jurisdiction Act Cap 141 RE 2019. That the applicants wish to be granted two prayers under one provision. That these prayers were supposed to be prayed separately. That the second prayer was supposed to be applied after grant of extension of time to file notice of appeal and the said application is filed under section 47 (2) of the Land Disputes Courts Act, CAP 216 RE 2019.

As for the third point of objection the respondents said that the court is improperly moved. That the proper provision to move the court for leave

to appeal is section 47 (2) of the Land Disputes Courts Act while the application for extension of time to file notice of appeal is section 11 (1) of the Appellate Jurisdiction Act. That the application is not specific and properly cited hence the said application is defective.

On the fourth point of preliminary objection, the respondents submitted that the affidavit of the applicants is full of arguments especially in paragraph 8, contrary to the requirement under Order XIX Rule 3(1) of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**) and the case of **Uganda vs. Commissioner of Prison Ex- Parte Matovu** (1966) EA 514. That an affidavit should not set out argumentative matters or copy of or extract from documents.

In the fifth point of preliminary objection, the respondents said that the application is omnibus. That, every application to the court must be by way of chamber summons supported by an affidavit. They said that two applications cannot be joined in a single Chamber Summons as they are governed by different provisions of the law. They relied on the cases of **Zaidi Baraka & 2 Others vs. Exim Bank, Misc. Commercial Application No.28 of 2015 (HC-Commercial Division DSM)** and the case of **Rutagatina C.L vs. Advocate Committee & Another,**

**Civil Application No.98 of 2010 (CAT-DSM)** (unreported). The respondents prayed for the application to be dismissed with costs.

In reply to the first point, the applicants said the application at hand has been brought against proper respondents and that is why they have sworn and filed a joint counter affidavit, raised the points of preliminary objections and they have submitted their written submissions.

On the second point the applicants said that the prayers are clear and properly stated in the Chamber Summons. That the applicants are moving the court to grant extension of time within which the applicant can first issue the notice of appeal and secondly file application for leave to appeal to the court of appeal. They admitted that the application contains two distinct prayers but to the contrary the application is for extension of time to file notice of appeal and once granted the applicants will file an application for leave to appeal to the court of appeal.

On the third point they said that there is no prayer for leave to appeal indicated in the Chamber Summons. That the application is for extension of time to file notice of appeal and to file application for leave. The

applicants said they will seek for leave after being granted extension of time, not before.

On the fourth point they said that the affirmed affidavit contains facts which explains why the applicants find themselves out of time in filing the Notice of Appeal and seeking leave to appeal. That all are pure facts establishing sufficient cause for delay. That the 8<sup>th</sup> paragraph only contains fact which establishes illegality.

On the 5<sup>th</sup> point the applicants say that the application at hand does not contain two distinct applications. That the chamber summons has only one prayer and that is an order for extension of time. That there is no law which provides that an application for extension of time to issue Notice of Appeal and an application for extension of time to file leave to appeal should be filed separately. They said that the cited cases are distinguishable as there is no combination of application in the matter at hand. They prayed for the raised points of preliminary objection to be dismissed with costs.

In their rejoinder, the respondents reiterated what was stated in their main submissions.

Having read the submissions by the parties, the main issue for consideration is whether the preliminary objections raised have merit.

The respondents in the first point of objection stated that the application has been preferred against wrong parties. That all the documents presented in this court by the applicants contain names which are different from the names appearing in Land Appeal No.72 of 2021. However, the respondents did not point out to the court the correct names. It is noted also noted in their counter affidavit that they have referred themselves to the exact names referred by the applicants in this application. They have as well not stated which provision of the law has been violated. In my view, it is not the duty of this court to dig out the correct names of respondents. Doing so will amount to digging out evidence which is contrary to the landmark case of **Mukisa Biscuits Manufacturing Company Ltd vs. West End Distributors Ltd (1969) at p. 700 & 701** on which among other things stated that a preliminary objection consists of point of law which if argued may dispose of the suit and that it cannot be raised if any fact has to be ascertained. Now to establish whether the respondents' names in this application are the same to those appearing in the impugned appeal, we have to refer to the copies of the said appeal, and that would be contrary

to the principle in **Mukisa Biscuits'** case. The issue of names would be conveniently addressed in the main application if necessary. The first point of objection has no merit.

On the second point of objection, it is the respondents' view that the application is improper for seeking two orders in a single application. That is an application for extension of time to file Notice of Appeal and an application for extension of time to file leave to appeal to the Court of Appeal of Tanzania. The applicants admitted that the Chamber Summons contains two prayers, however they said the only prayer that was meant was that for an application for extension of time to file Notice of Appeal and if they succeed then they would apply for leave to appeal. Though the Chamber Summons contains two prayers coiled into one, but the only cited provision is section 11 (1) of the Appellate Jurisdiction Act which caters for extension of time to file Notice of Appeal. Even the supporting affidavit by the applicants is confined to facts which constitute to the delay by the applicants to file notice of appeal. In that respect and considering that the applicants are laypersons the court shall invoke section 3A of the CPC and consider the application for extension of time to file Notice of Appeal the only prayer in the Chamber Summons as there is no enabling provision for extension of time to file

leave to appeal and further that the affidavit has confined itself to delay in filing the Notice of Appeal and nothing else. Consequently, this point too has no merit.

The third point is about the court being wrongly moved. That for the prayer of extension of time to file leave to appeal, the proper section is 47 (2) of Land Disputes Court Act. Since it has been established hereinabove that this application will only confine itself to extension of time to file Notice of Appeal, then this ground too has no merit as the proper prayer for extension of time to file Notice of Appeal has properly been preferred under section 11 (1) of the Appellate Jurisdiction Act. This, as said earlier, has due consideration not only to the prayer in the Chamber summons but to the affidavit supporting the application and the enabling section preferred by the applicant. The statement for leave to appeal is not supported by the enabling provision and it is not prejudicial to the respondents as nothing has been reflected in the affidavit related to leave to appeal and as laypersons the applicant have stated that they did not mean to pray for leave to appeal but only extension of time to file Notice of Appeal.



As for the fifth point of objection, I have gone through the affidavit in support of the application. Paragraph 8 of affidavit is not argumentative as complained of by the respondents. It only refers to a point of law which the applicants think would be proper for consideration by the Court of Appeal of Tanzania. In thorough examination, the affidavit is not argumentative. This ground too is short of merit.

Lastly, as for issue that the application is omnibus this has been covered when addressing the second and third points of preliminary objections. Since it has been established that the court will only concentrate on the prayer for extension of time to file notice of appeal then the other prayer becomes redundant and hence the concept of omnibus application cannot stand.

In the end result, the preliminary points of objection raised by respondents are without merit and are dismissed. Costs to follow event. It is so ordered.



*V.L. Makani*

**V.L. MAKANI**  
**JUDGE**  
**16/09/2022**