

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

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO.447 OF 2022

(Originating from Land Case No. 105 of 2021)

KULWA TIMOTHEO@KULWA KUKU

MUSOGOLO HAMISI

JOSEPH KIBWINA

PATRICK MWASAMAGE

ELINASTO EDWARD

.....APPLICANTS

VERSUS

**MARTHA MASANJA(Administratrix of the Estate of the late
Masanja Milanga).....RESPONDENT**

RULING

Date of Last Order: 13. 12. 2022

Date of Judgment: 19.12.2022

MWENEGOHA, J

I am invited to decide on two prayers, both being lumped up in one chamber application as follows; -

1. That, this court be pleased to extend of time for the applicants herein above to file an application to set aside an ex-parte order, given in Land Case No. 105 of 2021, dated on the 8th of December, 2021.
2. The court be pleased to set aside the ex-parte order.

This application was made under section 14 of the Law of Limitations Act, Cap 89 R.E 2019 and was supported by the affidavit, sworn by Advocate Walter Shayo. The same was heard by way of written submissions, Advocate Rogreen Mollel appeared for the applicants and the respondent was represented by Advocate Samuel Shadrack Ntabaliba.

Submitting in favour of the application, Mr. Mollel insisted that, the impugned ex-parte decision was obtained illegally in favour of the respondent. That, the applicants were never informed of the existence of the Land Case No. 105 of 2021 which was in this Court. That they were not served with the summons as per Order V Rule 12 of the Civil Procedure Code, Cap 33 R.E 2019. Mr. Mollel referred the Court to the case of **Principal Secretary Ministry of Defence and National Service versus Devram Valambia (1992) TLR 183** and argued for the Court to allow the application at hand owing to the pointed illegalities.

In reply, Mr. Ntabaliba, was first concerned with the competence of the application itself, on the reason that, the prayers contained in the chamber summons cannot be joined. These are, the prayer to extend time for applying to set aside an ex-parte decision out of time and the prayer to set aside the said ex-parte decision. To him these are two separate applications and each should have been made in its own chamber summons. Therefore, this application is omnibus in nature and the same is prohibited by law. Above all, to him, the entire application lacks merits for failure on part of the applicants to give sufficient reasons for the same.

Mr. Mollel, for the applicants did not file a rejoinder submission, hence he did not respond to the issue of competence of this application as raised by the counsel for the respondent.

Having gone through the submissions of parties, the affidavit and the counter affidavit from both the applicants and respondent herein, the issue for determination is whether the application has merits or not.

However, before going into determination of the merits or otherwise of the application at hand, I need to take note on the issue of the competence of this application as noted by Mr. Ntabaliba in his reply submissions.

I wish to start by expressing that joining two prayers in one application is allowed. The law has set conditions for Courts to entertain omnibus applications. It is settled that, if the prayers are interlinked or interrelated, they can equally be presented in one chamber summons, see **OTTU on behalf of P.L Asenga & 106 others, Super Auction Mart and Court Brokers and Others versus AMI (Tanzania) Limited, Civil Application No. 20 of 2014, Court of Appeal of Tanzania, Unreported**).

However, if the prayers are different or originate from different provisions of law, then joining them makes the application incompetent. This was rightly observed in **Rutagatina CL versus Advocate Committee, Misc. Civil Application No. 98 of 2010, Court of Appeal of Tanzania, at Dar Es Salaam, (unreported)**, that,

"So since the applications are provided for under different provisions it is clear that both cannot be "lumped" up together in one application, as is the case here".

Also, the same position was taken in **Godfrey Shoo and Others versus Mohamed Said Kitumbi, Misc. Land Application No. 109 of 2020, High Court of Tanzania (unreported)**, citing in approval the case of

Ally Abbas Hamis versus Najma Hassan Ally Kanji, Misc. Land Application, No. 140 of 2017, High Court of Tanzania, Land Division at Dar Es Salaam (unreported) where it was held that,

"Lumping of several prayers in a single application which those prayers are also different; and the considerations to be taken into account are different, the conclusion is not hard to find, but to conclude that the application is omnibus".

Turning to the case at hand, the applicants have advanced two prayers in this application. That of extension of time and prayer to set aside ex-parte order. No doubt that this is an omnibus prayer with two prayers which are not interrelated. Hence, they offend principles highlighted above on omnibus prayers. Consequently, I find the application at hand to be un maintainable. The two prayers joined in the chamber summons are totally different hence they cannot be lumped up together in a single application. As argued by Mr. Ntabaliba, each need to be filed as a separate application

Eventually, the application is hereby struck out. No order as to costs





T.N. Mwenegoha.

Judge

19/12/2022