

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 30 OF 2022**

(Originating from Land Case No. 99 of 2021)

**JULIANA ARMSTRONG JERRY ..... APPLICANT**

**VERSUS**

**INTERNATIONAL COMMERCIAL BANK**

**OF TANZANIA ..... 1<sup>ST</sup> RESPONDENT**

**ARMSTRONG NICO JERRY ..... 2<sup>ND</sup> RESPONDENT**

**SKYMAX ELEVATORS LTD ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

*Date of Last Order: 09/08/2022*

*Date of Ruling: 31/03/2022*

**A. MSAFIRI, J**

The applicant has brought this application under Order XXI Rule 57, Order XXX VII Rule 1, Order XL III Rule 2, Sections 68 (c) & (e) and 95 of the Civil Procedure Code R.E. 2019.

She is seeking for the following orders;

1. An interim temporary injunction orders in favour of the applicant to restrain the respondent or its agents from selling or attaching the mortgaged property Plot No. 1384 Block "A" Ilala pending determination of the objection proceedings application.
2. This Hon. Court be pleased and entertain this objection proceedings, investigate and ultimately revoke the Mortgage Agreement made between the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent.

*Adls.*

3. Costs of this application be provided for.

During the hearing of the application which was argued orally, the applicant was represented by Mr. Titus Aron, learned advocate while Mr. Thomas Rwebangira, advocate appeared for the 1<sup>st</sup> respondent and Mr. Jerry Msamanga, appeared for the 3<sup>rd</sup> respondent and was holding brief for the advocate of the 2<sup>nd</sup> respondent.

The application was argued on merit where counsels for the parties gave their submissions for and against the application. I appreciate the industry and energy expended in their submissions before the court.

While submitting in opposition of the application, Mr. Rwebangira's submissions raised an indirect objection by stating that this is an omnibus application, where the applicant is seeking first for a temporary injunction and second for the objection proceedings. That these two applications cannot be applied simultaneously in the same chamber application. That, the applicant is seeking for injunction under Order XXXVII Rule 1 and Section 68 (c) & (e) of the Civil Procedure Code, and that the injunction is a restraint order.

He submitted further that objection proceedings is being sought under Order XXI Rule 57 of the Civil Procedure Code and it is also a restraint order. He stated that, the Court cannot deal with the Omnibus application as it is fatal.

In reply to this seemingly objection, Mr. Aron for the applicant stated that, Order XLIII Rule 2 of the Civil Procedure Code provides clearly that any application should be made by chamber summons supported by an *Alleg.*

affidavit. That there is nowhere in the provisions it is has been stated that a chamber summons must have only one prayer. He was of the view that, the prayers indicated in chamber summons are in accordance with the law.

I should admit that, this application was heard on merit. However, after the applicant's submission on merit, as pointed earlier, when responding, the 1<sup>st</sup> respondent raised an objection while submitting on merit.

The Court allowed the matter to proceed on merit and decide that when determining the application, it shall deal first on the objections by the 1<sup>st</sup> respondent and if they are not tenable, it shall proceed to determine the application on merit.

Taking that stance, I have no intention of narrating what the counsels from both parties submitted on merit of this application but I will start with the objections raised by the counsel for the 1<sup>st</sup> respondent starting with the argument on whether the application is omnibus and whether being omnibus, it is fatal before this Court.

Since the objection is on point of law, although it was not properly raised by the 1<sup>st</sup> respondent as a preliminary objection, I am of the view that it is this court's duty to apply and interpret the laws of the country and ensure their proper application.

Basing on that, I will determine the issue on whether this application is omnibus hence incompetent before the court. The application as observed seeks for two distinct prayers, first is for the interim temporary injunction. The same is under Order XXXVII of the Civil Procedure Code. The second

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prayer is the objection proceedings, seeking for the Court to investigate and ultimately revoke the mortgage agreement.

The fact that the application constitutes two distinct prayers it amounts to omnibus application in law. An omnibus application is not outrightly barred by the law, but it is only valid if the prayers are interlinked or interdependent.

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 cases of **Geoffrey Shoo & another vs. Stella Shoo**, Misc. Land Application No. 109 of 2020, High Court Land Division, Dar es Salaam (unreported) & **Daudi Lengiyeu vs. Dr. David E. Shungu**, Civil Application No. 28 of 2015 (unreported) and other numerous authorities on the similar position).

As per the above 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, it is apparent that the two prayers in the chamber summons are not related. The two prayers are made differently, they are provided for under different provisions and hence they cannot be lumped up together in one application as the applicant has done in the present matter. In my view, the applicant should have filed two separate applications. In the case of **Geoffrey Shoo & another vs. Stella Shoo** (supra), it was held that; *Acute.*

*"Separating the two prayers in the case at 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 specific issues that need to be determined".*

Finding that this application is omnibus, what then is the remedy for such application? It was determined 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) that;

*".....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"** (Emphasis added).*

Applying that principle, I find that this application is incompetent for being omnibus. By this finding, I need not determine another objections nor go into the merits of the matter. The application is therefore struck out with costs.

It so ordered.

Dated at Dar es Salaam this 31<sup>st</sup> day of March, 2022.



A handwritten signature in blue ink, appearing to read "A. Msafiri", is written over a horizontal line.

**A. MSAFIRI**  
**JUDGE**