

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

MISC. LAND CASE APPEAL NO. 23 OF 2022

**ROBBO JOACHIM THOBIAS, RAPHAEL M. KALINGA,
JUMA KAJEMBE, BEISHA NGONYANI, MBORA SHOO,
JUSTUS RWEGOSHORA AND 72 OTHERS.....APPLICANTS**

VERSUS

TANZANIA NATIONAL ROADS AGENCY.....1STRESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

R U L I N G

Date of Last Order: 21.04.2022

Date of Ruling: 23.05.2022

T. N. MWENEGOHA, J.

On 21st of March 2022, the instant matter came for mention and to set a Ruling date. Mr. Abubakar Salim, the counsel for the applicants was given the chance to address the court he reminded it of his application that, they have prayed for two prayers that of injunction and the other is for a representative suit. Upon noting that two prayers have been joined in the same application, the court asked the counsels for the parties to address it on the competence of the application at hand. The parties complied with the order and addressed the court by way of written submissions.

The counsel for the applicants in his submissions maintained that, this application is acceptable in the eyes of law. There are number of decisions in our jurisdiction that have allowed the combining of more than one

prayer in a single application. He cited the case of **Rutagatina C.L vs. The Advocates Committee and Clavery Mtindo Ngalapa, Civil Application No. 98 of 2010, Court of Appeal of Tanzania**, where it was held that:-

"In both applications the jurisdiction is also different. An application under Rule 10 is at the exclusive domain of this court. Under section 5 (1) of the Appellate Jurisdiction Act and Rule 45 of the Rules both the High Court and this Court have Jurisdiction to determine the application for leave to appeal."

Other cases include; **The Registered Trustees of Archdiocese of Songea vs. C.F Builders Limited, Civil Application No. 462/10 of 2017**, where the omnibus application was rejected for reasons that the prayers made there in fell under two distinct jurisdictions. **MIC Tanzania Limited vs. Minister for Labour and Youths Development and Attorney General, Civil Appeal No. 103 of 2004, Court of Appeal of Tanzania.**

The applicants counsel insisted that, this court has powers to determine the application at hand and grant the prayers sought by the applicants.

Mr. Edwin Joshua Webiro, State Attorney for the 1st and 2nd respondents was of the firm reply that, it has already been settled that, combing several reliefs which are unrelated and fall on different jurisdiction and are governed by different laws is fatal and worth to be struck out. This was decided in the case of **The Registered Trustees of Archdiocese of Songea (supra).**

He went on to argue that, in the instant application the applicants are praying for temporary injunction and a leave to file representative suit. These reliefs are unrelated and are governed by district laws. That, an application for leave to file a representative suit is governed by Order I rule 8 (1) and (12) (10 and section 95 of the Civil Procedure Code, Cap 33 R. E. 2019. As for injunction it is preferred under section 2(3) of the Judicature and Application of Laws Act, Cap 2 R. E. 2019. Since the two reliefs are unrelated and are from two different laws, they cannot be joined in one application. Therefore, this application is unmaintainable. The learned State Attorney for the respondents also cited others cases including the case of **MIC Tanzania Limited, supra.**

In rejoinder, the applicants' counsel reiterated his submissions in chief and maintained that, all authorities cited by the counsel for the respondents, are in favour of the applicants.

Having gone through the arguments of the counsels for the parties as far as the competence of this application is concerned, the issue for determination is whether the application is tenable.

It is settled that, joining two or more different prayers in one application is not bad in law. This was held in **OTTU on behalf of P.L Asenga & 106 others, Super Auction Mart and Court Brokers and Others vs. AMI (Tanzania) Limited, Civil Application No. 20 of 2014, Court of Appeal of Tanzania, (Unreported),** that,

"In my opinion, the combination of the two applications is not bad in law. I know of no law that forbids such a course. Courts of law abhor multiplicity of proceedings. Courts of law encourage the opposite."

However, there are rules for consideration in allowing applications of such nature. The law needs that, for two or more independent matters to go together in one application, the same should be interrelated and further that they should be in a nature that they can conveniently be jointly determined by the court.

This rule was well stated in the famous Court of Appeal decisions of **Daudi Lengiyeu vs. Dr. David E. Shungu Civil Appl. No. 28 of 2015** and **Bibie Hamed Khalid vs. Mohamed Enterprises Ltd and Two others, Civil Application No. 6 of 2011, (both unreported)**. Therefore, the only test for an omnibus application to be entertained in court is that the prayers contained in the chamber summons should be interrelated and capable of being joined, see **Rutagatina CL (supra)**.

As argued by the learned State Attorney for the respondents in his submissions, I agree that the two prayers contained in the applicants' chamber summons are neither interrelated nor interdependent. Obviously, they cannot be joined in a single application. Therefore, this application is incompetent owing to the reasons I have wondered to give here in above.

Eventually, the application is struck out.

No order as to costs.




T. N. MWENEGOHA
JUDGE
23/05/2022