

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

**MISC. APPLICATION NO. 125 OF 2022**

(Arising from Land Appeal No. 135 of 2021 of the High Court Land Division, originating in Land Case No. 418/2021 of the District Land and Housing Tribunal of Ilala)

**MWANAHAMISI MOHAMED SIMBA ..... APPLICANT**

**VERSUS**

**SUZAN JOHN MUSWATI ..... RESPONDENT**

**RULING**

*Date of Last Order: 26/06/2022*

*Date of Ruling: 12/7/2022*

**A. MSAFIRI, J**

The applicant has filed this application under Section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 and Section 47(1)(2) of the Land Disputes Courts Act, Cap 216 R.E 2019 seeking for the court orders that;

- (i) The time limit within which to apply for leave to appeal to the Court of Appeal be extended and,
- (ii) Leave to appeal to the Court of Appeal of Tanzania be granted.

While filing her counter affidavit, the respondent also filed a Notice of preliminary objection on the point of law that the Application is defective for containing omnibus prayers.

*Atts*

By the leave of the court, hearing of the preliminary objection was conducted by way of written submissions. For the respondent, she was represented by Godon Nashon, learned advocate and the applicant represented herself (appeared in person).

Submitting in support of the preliminary objection, Mr. Nashon stated that, it is trite law that the application should not contain omnibus prayers and that, one application should not have two different provisions of law.

He said that the application at hand contains two distinct prayers which are governed by two different laws. That, as per the chamber summons, the first prayer have been brought under Section 11(1) of the Appellate Jurisdiction Act, and the second prayer have been made under section 47(1) and (2) of the Land Dispute Courts Act.

He cited the case of **Nuridin Mohamed Chingo vs. Salum Said Mtiwe and Another**, Misc. Civil Application No. 29 of 2021 where it was held that;

*"When two different prayers with different provisions of law are sought in one application, then the said application becomes omnibus and cannot stand in the eyes of the law".*

He added that, it was proper for the applicant to seek for the extension of time of which if granted, then that is when the application for leave to appeal comes in. He concluded by praying that the application be struck out with costs.

*Alle*

In reply, the applicant submitted that, she has indeed mixed two prayers in the chamber summons which are extension of time to apply for leave to appeal to the Court of Appeal and leave to appeal to the Court of Appeal. However, she pointed that, combining prayers in one application is not bad although there are considerations that must be made in deciding whether or not the combination is proper.

She averred that, it is trite law that an application which is composed of two or more prayers which are interlinked and inter dependent is allowed. She was of the view that, the two prayers in the present application are interlinked and interdependent. She cited the cases of this Court where it entertained the two prayers in one application. Among the cited case is the case of **Magige Giboma vs. Mangang'a Mahono**, Misc. Civil Application No. 9 of 2021, High Court Musoma (Unreported).

She argued that the authorities cited by the respondent are distinguishable from the application at hand. She urged the Court to overrule the preliminary objection.

Having considered the rivalry submissions between the parties, the 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.

There are numerous authorities on that school of thought which I associate myself with. (see the cases of **Geofrey Shoo and Another vs. Stella**

*Atle*

**Shoo**, Misc. Land Application No. 109 of 2020, High Court (unreported) and **Daudi Lengiyeu vs. Dr. David E. Shungu**, Civil Application No. 28 of 2015 (unreported).

It appears therefore that, as per the cited authorities, the only tests for an omnibus application to stand in Court is that the prayers 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 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 an application for leave to appeal to the Court of Appeal.

It is my view 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 applicant the leave for further action which is 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)**, in a similar position, the Court observed;

*"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 parties to have focus on the specific issues that need to be determined".*

*Alle.*

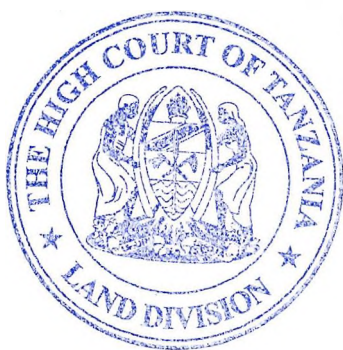
It was also observed by the Court of Appeal in the case of **Mohamed Salimin vs. Jumanne Omary Mapesa**, Civil Application No. 103 of 2014, as follows;

*"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".*

Guided by the above principle, I agree with the submissions by the counsel for the respondent and find that the application is incompetent for being an omnibus.

I hereby sustain the preliminary objection and struck out the Application without costs.

Dated and signed at Dar es Salaam this 12<sup>th</sup> day of July, 2022.



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