

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 333 OF 2022

(Arising from Misc. Land Revision No. 165 of 2021 District Land and Housing Tribunal for Kisarawe at Kibaha)

ISSA RAJABU MCHOMVU.....APPLICANT

VERSUS

AZIZA RAJABU KONDO.....RESPONDENT

Date of last order: 02/8/2022

Date of ruling: 24/8/2022

RULING

A. MSAFIRI, J.

This is a ruling on preliminary objection raised by the respondent, the notice of which was lodged in Court on 8th July 2022, to the effect that;

The applicant's application is omnibus.

On 11th July 2022 this Court ordered the said objection be disposed of by written submissions whereby Mr. Stanslaus Harawe learned advocate appeared for the applicant while the respondent appeared in person, she had no legal representation.

Adls

The respondent contended that, the present application which has been preferred under Sections 14(1) and (2), and 19 (1),(2)(3) and (5) of the Law of Limitation Act [CAP 89 R.E 2019], Section 38 (1) of the Land Disputes Courts Act, [CAP 216 R.E 2019], Sections 68 (e) and 95 and Order XXXIX Rule 5 (1) of the Civil Procedure Code [CAP 33 R.E 2019 (the CPC) is incompetent for being omnibus because it combines two prayers and reliefs hence it ought to be dismissed.

To fortify her stance the respondent has referred to me the decision of **Zaidi Baraka & others v Exim Bank (T)**, Misc. Commercial Application No. 28 of 2015 High Court of Tanzania at Dar es Salaam (unreported). The respondent contended that the intended application for revision by the applicant has no chances to succeed since this Honourable Court had struck out another application lodged by the applicant for being incompetent.

On reply, the applicant having given the background to the matter at hand contended that there is no law which forbids courts from hearing an application which contains two or more prayers in a chamber application. *Atle*

To fortify his stance, the applicant has referred to me the decision of the Court of Appeal in **MIC Tanzania v Minister for Labour and Youth Development**, Civil Appeal No. 103 of 2004 (unreported) in which the Court of Appeal held that combination of two applications which are interrelated are not bad in law. It was further held in that decision that while Courts of law discourage multiplicity of proceedings it encourages the opposite.

It was further argued by the applicant that it is not bad in law to combine two prayers in one chamber application provided that the two prayers are interrelated as per the present application which has interrelated prayers. The applicant has referred to me another decision of **Pride Tanzania Limited v Mwanzani Kasatu Kasama** Misc. Commercial Cause No. 230 of 2015 High Court of Tanzania at Dar es Salaam (unreported) in which it was held that;

"While omnibus application which is composed of two or more unrelated applications may be labeled omnibus and consequently struck out for being incompetent, an application comprising two or more applications which are interrelated is allowable at law."

Aelle.

The applicant maintained that the prayers made in the present application are interrelated and it was not bad in law to combine them. The applicant therefore prays for the preliminary objection be overruled with costs.

On rejoinder the respondent reiterated his submission in chief.

Having gone through the submissions in support and rival to the preliminary objection raised by the respondent, the point for my determination is whether the said objection has merits.

In the instant application there is no doubt that there are two reliefs sought by the applicant. On the first relief the applicant is praying for extension of time within which to file revision against the judgment and decree of the District Land and Housing Tribunal for Kisarawe. On the second relief the applicant is seeking for an order for maintenance of status quo restraining the respondent from disposing the land in dispute measuring about three acres.

In the decision of **Pride Tanzania Limited v Mwanzani Kasatu Kasama** [supra] referred to me by the applicant, the guiding principles to be taken in determining whether an application is rendered defective for

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being *omnibus* is interrelatedness of the reliefs sought. Where the prayers sought are related then the application is not bad in law and the opposite.

In the instant application the question needs to be resolved is whether the reliefs sought by the applicant are interrelated. I honestly find that the two reliefs sought are governed by different laws, their determination requires different yardsticks and also different jurisdictions. For instance the application for extension of time has its own principles for determination. These includes accounting for each day of delay, length of the delay, reason for the delay and whether there are any allegations of illegality.

On the other hand the second relief which has been preferred under Order XXXIX Rule 5(1) of the CPC, is a distinct relief which has its own factors to be taken into account for its determination. It gives powers to the Court which passed the decree or the appellate court to order stay of execution pending appeal. The said provision provides;

5.-(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Court may order, nor shall execution of a decree be stayed by reason only of an appeal having *Alle* .

been preferred from the decree but the Court may, for sufficient cause, order the stay of execution of such decree.

The foregoing provision gives powers for stay of execution to the Court which passed the decree or to the Court exercising appellate jurisdiction. It follows therefore that, this Court neither passed the decree or exercises appellate jurisdiction over the said decree which is sought to be stayed. I hold further that, just as in the first relief sought, there are factors to be taken into account in determining the application for stay of execution. These factors have been stated under Order XXXIX Rule 5 (3) of the CPC. It reads;

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the High Court or the court making it is satisfied that;

(a) That substantial loss may result to the party applying for stay of execution unless the order is made;

(b) That the application has been made without unreasonable delay; and

Adlle.

(c) That security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

It is for the foregoing reasons that the two reliefs prayed for in the present application are not interrelated as they have distinct factors for their determination as well as different jurisdictions.

In upshot and for the foregoing, I proceed to sustain the preliminary objection raised by the respondent and proceed to strike out this application with costs.

It is so ordered.



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

**A. MSAFIRI,
JUDGE
24/8/2022**