

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC.LAND CASE APPLICATION NO. 711 OF 2022

HAMISI OTHMANI MWANYA1ST APPLICANT

AMRI YAHAYA MFIKILWA.....2ND APPLICANT

SAIDI SALIM TENGA.....3RD APPLICANT

SURA MWITA SURA.....4TH APPLICANT

VERSUS

KINONDONI MUNICIPAL COUNCIL.....1ST RESPONDENT

JMZ LAND FIELD CO.LIMITED.....2ND RESPONDENT

BOARD OF TRUSTEES NATIONAL

SOCIAL SECURITY FUND (NSSF).....3RD RESPONDENT

ATTORNEY GENERAL.....4TH RESPONDENT

RULING

23/12/2022 & 27/02/2023

L. HEMED, J

On 8th day of November, 2022, the applicants, Hamisi Othumani Mwanya, Amri Yahaya Mfikiwa, Saidi Salim Tenga and Sura Mwitatura lodged the present application under Order 1 Rule 8 and section 95 of the Civil Procedure Code, [Cap. 33 RE 2019], against the respondents

Kinondoni Municipal Council, JMZ Land Field Co. Limited, Board of Trustees of National Social Security Fund (NSSF) and the Attorney General. In the said application, the applicants were seeking for the following orders;

EXPARTE

- 1. THAT, This Honourable Court be pleased to issue an order that, STATUS Quo in the suit property located within Mjimpya Street (Kinondoni area) of Mabwe Pande Ward, Kinondoni District, claimed be MAINTAINED Pending the hearing and determination of this application.(sic)*
- 2. THAT, This Honourable Court be pleased to issue a representation order, granting the applicants leave to file and prosecute a suit against the respondents on their own behalf and on behalf of all those and 2 persons whose names appear in the list annexed to the affidavit annexed here to.*

INTER-PARTE

- 1. THAT, this Honourable Court be pleased to issue a representation order, granting the applicants leave to file and prosecute a suit against the respondents on their own*

behalf and on behalf of all those 82 persons whose names appear in the list annexed to the affidavit annexed hereto.

2. Costs.

3. Any other order(s) this Honourable Court may deem proper to grant."

All four (4) respondents filed their counter affidavits to challenge the said application. However, the 1st, 3rd, and 4th respondents, along side their joint counter affidavit raised a preliminary objection on point of law to the effect that.

"...the present application is untenable in law for being omnibus application thus render the application to be incompetent."(sic)

On 25th November, 2022 this Court directed the preliminary objection to be argued by way of written submissions, following the prayer made by Mr. Danie Oduor, learned counsel for the applicants. The 1st, 3rd and 4th respondents were represented by Ms. Kause Kilinzo, learned State Attorney, while, Ms. Viola Mwamba. Learned advocate represented the 2nd respondent. The submissions were filed as per the directed schedule.

Only that, the 1st, 3rd, and 4th respondents opted not to file rejoinder submissions.

Arguing in support of the preliminary objection, Ms. Kilonzo learned State Attorney stated that the prayers which the applicants are moving this court to grant, are two unrelated prayers which in her view do not go together. It was asserted that the provisions of the law which govern the prayer are unrelated. The prayer for representative suit is governed by Order 1 Rule 8 of the Civil Procedure Code, Cap 33 while the prayer for maintenance of *status quo* is an injunctive order in nature and the same is governed by section 68(c) and (e) and Order XXXVII of the Civil Procedure Code.

Ms. Kilonzo was of the view that combining the unrelated prayers in one chamber summons makes the application omnibus and hence incompetent. To cement her point, she cited the Court of Appeal decision in **Mohamed Salimin vs. Jummanne Omary Mapesa**, Civil Application No. 103 of 2014; where the Court did strike out the application for containing unrelated prayers.

In reply thereto, Mr. Daniel Oduor learned advocate for the applicants contended that the application is proper before the court for having been brought under the relevant enabling provisions. He asserted

that *interparte* prayers are for this Court to issue to the applicants leave to file and prosecute a suit against the respondent on their own behalf and on behalf of 82 other persons. He submitted further that, because of the threat and fear of losing the suit property the applicants found necessary to seek for an order that *STATUS QUO* be maintained in the suit piece of land pending the hearing and determination of this application.

Mr. Oduor continued to state that the prayers are compatible and reconcilable. In his opinion omnibus application are not prohibited in law and that the essence of having more than one application or prayers in chamber summons is to save the Court from having multiple proceedings. To cement his arguments he cited the case of **Kashinde Machibya vs. Hafidhi said**, Civil Application No. 48 of 2009. Mr. Oduor distinguished the case of **Mohamed Salimin** (*supra*) by stating that the said case concerned with the Court of Appeal Rules and not the Civil Procedure Code.

Having gone through the submissions made by both learned counsel. Let me turn to determine whether the preliminary objection holds water. In the case at hand the applicants have combined two applications in one; an application for an order to maintain the *status quo* in the suit

property located within Mji Mpya street (Kinondoni area) of Mabwe Pande Ward, Kinondoni District and secondly; for an order giving leave to the applicants to file and prosecute a suit against the respondents on their own behalf and on behalf of all those 83 persons whose names appear in the list annexed to the affidavit.

I must clearly state at the outset that combining of various prayers/applications in one chamber summons is not a sin. Indeed, it helps in avoiding multiplicity of proceedings. This position was affirmed by the Court of Appeal in **MIC Tanzania Limited vs. Minister for Labor and Youth Development**, Civil Appeal No. 103 of 2004. However, in order for several separate prayers to be combined into one chamber application, they must be interlinked and interdependent.

The question that arises is whether the application at hand contains interlinked or interdependent prayers. In the matter at hand, the chamber summons has the prayer for maintenance of *status quo* and the prayer for leave to institute a representative suit. In my firm opinion, the two prayers are not interrelated they are distinct from each other. I am holding so because the application for leave to file representative suit is an application of *locus standi*, where the applicants are looking for the

authority to enable them institute proceedings against the respondents under representation. The prayer (application) for an order to maintain the *status quo* is for *injunctive* orders which has to be instituted by persons with *locus standi*. In the present case the applicants have not yet been given such '*locus standi*' to institute any representative proceedings against the respondents herein, therefore they cannot have legal legs to apply for an order to maintain *status quo*.

In **Gervas Mwakatwila and 5 others vs. The Registered Trustees of Morarian Church in Southern Tanganyika**, Land Case No. 12 of 2013, my brother at the Bench, Hon Dr. Ndika, J (as he then was) observed that;

"A combined application still be supported by a single affidavit, which must, then, provide all necessary facts that will provide justification for granting each and every prayer in the chamber summons."

The observation of Hon. Dr. Ndika, J (as he then was) herein above fits squarely in omnibus applications whose prayers are interrelated or compatible. In the present application no affidavit can support the two incompatible prayers. As one of the prayers, (the one for maintenance of


status quo) is premature as the applicants are yet to acquire the prerequisite *locus standi*. In the final analysis, I am confident to hold that the application at hand is an omnibus which contains prayers which are not interlinked or interdependent.

My sentiments are such that where combined prayers like in this case are apparently incompatible or discordant, the application must be rendered irregular and incompetent. This position was also held by the Court of Appeal of Tanzania in **Bibie Hamad Khalid vs. Mohamed and Hamis Khalid Othuman**, Civil Application No. 6 of 2021.

From the foregoing, I find merits in the preliminary objection. it deserves to be sustained. The entire application is thus struck out with costs. It is so ordered.

DATED at DAR ES SALAAM this 27th February, 2023




L. HEMED
JUDGE
27/02/2023

COURT: Ruling is delivered today 27th February 2023 in the presence of Mr. Daniel Odour and Ms. Sheila Julius Advocates for the applicants and

Mr.Jumanne Mfinanga SA and Ms.Viola Mwamba, advocate for the Respondents. Right of appeal explained.

