

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

MISC LAND APPLICATION NO. 607 OF 2022

(Arising from Civil Reference No. 4 of 2019 of the High Court of Tanzania – Land Division at Dar es Salaam)

PRAKSEDA BARNABAS

(Legal Representative of **HARRISON MANDALI**) **1ST APPLICANT**

MEKEFASON MANDALI **2ND APPLICANT**

REHEMA R. KANGE **3RD APPLICANT**

MARIAM MAGERO **4TH APPLICANT**

EZRA J. MATOKE **5TH APPLICANT**

MARRY KILLIAN JOSEPH MCAHU

(Legal representative of **KILIAN J. MCHAU**) **6TH APPLICANT**

ABDALLAH MVUNGI **7TH APPLICANT**

ELIHURUMA MREMI **8TH APPLICANT**

RUKIA ATHUMAN **9TH APPLICANT**

MAJUTO RAJABU MBISA

(Administrator of the Estate of **ABUU M. BASAI**) **10TH APPLICANT**

VERSUS

THE REGISTERED TRUSTEES OF

THE ARCHDIOCESE OF DAR ES SALAAM **RESPONDENT**

Date of last Hearing: 14/06/2023

Date of Ruling: 22/06/2023

RULING

I. ARUFANI, J

The applicant filed in this court the present application under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019, section 14 (1) of the Law of Limitation Act, Cap 89, R.E 2002, section 2 (1) and 3 of JALA, Cap 358 R.E 2002 and Order 39 Rule 5 (1) of the Civil Procedure Code, Cap 33, R.E 2002. The court has observed the laws upon which the

application is made is cited as R.E 2002 instead of being cited as R.E 2019 which is the current revised edition of the cited laws. As the stated observation is not the issue need to be determined in the matter at hand the court will not deal with the same in this ruling. The chamber summons shows the applicants are seeking for the following orders: -

- 1. Extension of time to be granted for the applicants to apply for stay of execution of the decree dated 7th September 2020 in Civil Reference No.4 of 2019.*
- 2. Subject to the court granting prayer (1) above, this court be pleased to stay execution of the decree in Civil Reference No.4 of 2019 pending the determination of an application for extension of time to apply for revision of the decision which application is now pending in the court of appeal as Civil Application No.455 of 2021.*
- 3. That the Honourable court be pleased to extend time for the applicants to file a notice of appeal against a decision of the High Court (land division) Hon. V.L Makani J dated 7th September 2020 in Civil Reference No. 4 of 2019.*
- 4. The court be pleased to grant extension of time to apply for leave to appeal against the decision of the High court (Land Division) Hon. V.L Makani J dated 7th September 2020 in civil reference no 2 of 2019.*
- 5. Costs of this application be provided for*
- 6. Any other orders as the hon. Court may deem fit and just to grant."*

Upon the respondent being served with the application they filed in the court their counter affidavit accompanied with a notice of preliminary objection containing four points of law which read as follows: -

- a) That in so far as the chamber summons seeks for four (4) distinct reliefs grantable under four (4) different legislations, the application is incompetent for being an omnibus;*
- b) That the application is incompetent for want of supporting affidavit of each of the ten (10) applicants;*
- c) That prayer 2 for stay of execution is predicated on non – existent application for extension of time to apply for revision as civil Application No. 455/01 of 2021 which is neither mentioned nor annexed to or referred anyhow in the applicant's joint affidavit and*
- d) That the supporting affidavit is incurably defective for containing legal arguments and conclusions under paragraphs 8 and 10 thereof."*

When the application came for hearing the applicants were represented by Ms. Aziza Msangi, learned counsel and held brief for Mr. Michael J. T. Ngalo, learned counsel for the respondent. The counsel for the applicants told the court the counsel for the respondent is praying the points of preliminary objection raised by the respondent be argued by way of written submission and the prayer was granted. Therefore, the application was argued by way of written submissions.

The counsel for the respondent decided to abandon ground (b) and (d). He argued grounds (a) as it is and argued ground (c) and (b) together. He stated in relation to ground (a) which states the application is incompetent for being omnibus that, it is now settled that an applicant should not lumped an assortment of cocktail of various reliefs in one chamber summons or notice of motion. He stated there are several decisions of the High Court and the Court of Appeal which abhor and discourage omnibus applications.

He argued the application at hand contain four substantive prayers based on and grantable under various pieces of legislations cited therein. He went on arguing that, the four prayers are supported by only one affidavit which does not contain material facts pertaining to each of the four reliefs sought in the chamber summons. He argued that make it impossible for the court to consider and determine each relief on its merit.

He supported his submission with the cases of **Julius Philibert Shadrack V. The Board of Pamba Secondary School & Two Others**, Misc. Cause No. 151 of 2020, HC at MZA and **Dr. Salum Ali Chambuso V. Paul Elias Maro & Another**, Misc. Civil Application No. 589 of 2021 HC at DSM (both unreported) which set out the test to be considered when determine whether an application is omnibus or not. He

invited the court to apply the test laid in the cited cases to make a definitive finding and holding that the application is omnibus. He submitted that, after the court held the application is omnibus the next step is for the court to strike out the entire application with costs.

As for the second ground of objection which states there is no application for extension of time before the Court of Appeal, he argued that the order applied for under paragraph 2 of the chamber summons is untenable and/or unmaintainable because it is predicated on a non-existent application pending in the Court of Appeal. He submitted that, the application for revision filed in the Court of Appeal by the applicant as Civil Application was heard and determined in August, 2022.

He argued that, the mentioned Civil Application No. 455/01 of 2021 is an application for review of the decision of the Court of Appeal made in their application for Revision No. 390/01 of 2019 which was determined on 13th September, 2021. He submitted that the foregoing situation renders the second prayer of the applicant's incompetent. He invited the court to find there is merit in the two grounds of objection and prayed the court to find the application is omnibus and incompetent basing on the second ground. At the end he prayed the court to struck out the application with costs.

In his reply the counsel for the applicants, Mr. Samson Edward Mbamba submitted that combination of two or more prayers in one application is not discouraged and supported his submission with the case of **Tanzania Knitewear Ltd V. Shamshu Esmail** [1989] TLR 48 where it was held combination of two applications is not bad at law. He argued it is not the application seeking reliefs under different law which determine whether the application is omnibus or otherwise.

He cited in his submission the case of **The Project Manager ES-KO – International Inc, Kigoma V. Vincent J. Ndungumbi**, Civil Appeal No. 22 of 2009 where it was stated application for extension of time and the application for leave could have been heard and determined in the same ruling. He also cited in his submission the case of **Harrison Mandali & Nine Others V. The Registered Trustees of Archdiocese of Dar es Salaam**, Misc. Land Application No. 1126 of 2017 which quoted with approval the position of the law stated in the case of **The Project Manager ES-KO – International Inc, Kigoma** (supra) and argued we are guided by the judicial pronouncement of the Court of Appeal made in the above cited case.

As for the second ground of objection he stated they are wondering how that can be a preliminary objection as it requires the examination

into the truth or otherwise of a fact to be proved. He argued that, a preliminary objection entails a pure point of law as per **Mukisa Biscuits Manufacturing C. Ltd V. West End Distributors Ltd**, [1969] EA 696 which was quoted in the case of **National Insurance Corporation of (T) Ltd V. Shengena Ltd**, Civil Application No. 20 of 2007 where it was state that, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as preliminary point may dispose of the suit. Finally, he prayed the court to overrule the points of preliminary objections raised by the respondent with costs.

In his rejoinder the counsel for the respondent stated the position of the law stated in the cases of **Tanzania Knitwear Tanzania Ltd** and **The Project Manager Es-ko- International Inc Kigoma** (supra) are no longer good authorities as there are more recent decisions made by the High Court and the Court of Appeal which abhor and discourage omnibus applications. He referred the court to the cases of **Arcopar (O. M) S. A V. Herbert Marwa & Family Investment Co. Ltd & Three Others**, Civil Application No. 94 of 2013 and **Ally Ally Mbegu Msilu V. Juma Pazi Koba** (Administrator for the Estate of **Hadija Mbegu Msilu**), Civil Application No. 316/01 of 2021 where it was stated the two

applications ought to be filed separately instead of lumping them together.

He contended in relation to the ground of the application pending before the Court of Appeal that, he never stated in his submission that there is no application for extension of time pending before the Court. He argued he stated in his submission that, Civil Application No. 455/01 of 2021 filed before the Court of Appeal by the applicants is not one for revision of Civil Revision No. 4 of 2019 of this court. He stated the application before the Court of Appeal is one for review of the Court of Appeal decision made in Civil Revision No. 390/01 of 2021.

He went on arguing that, the applicants' counsel submission that the issue of pendency or not of the application before the Court of Appeal is a question of fact and cannot be a subject of preliminary objection is misleading aimed at nothing but to say the obvious truth that the applicants have no any pending application for revision before the Court of Appeal upon which the present application can be made. He argued it is unfortunately that the applicants have not annexed copies of any application they alleged is pending before the Court of Appeal. He submitted the court cannot rely on assumption to make determination of any disputed matter.

The court has carefully gone through the chamber summons and its supporting affidavit together with the counter affidavit filed in the court by the parties. It has also given due consideration the submissions filed in the court by the counsel for the parties in support of the points of preliminary objections raised by the respondent. It has found the issue need to be determined in this matter is whether the points of preliminary objection raised by the respondent deserve to be upheld. In answering the stated issue, I will start with the first point of preliminary objection and thereafter I will continue with the second point of preliminary objection.

Starting with the first point of preliminary objection which states the application is incompetent for being omnibus the court has found the position of the law as stated in number of cases which some of them are the cases cited in the submission of the counsel for the parties is very clear that, combination of two applications in one is not bad at law as courts abhors multiplicity of proceedings and cases and there is no specific law barring such application. The stated position of the law can be seeing in the case of **Tanzania Knitwear Ltd** (supra) where Hon. Mapigano, J (as he then was) held that: -

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

The above holding was approved by the Court of Appeal in the case of **MIC Tanzania Ltd V. Minister of Labour and Youth Development & Another**, Civil Appeal No. 103 of 2004. However, as rightly argued by the counsel for the respondent there are some circumstances where combination of two or more applications is not allowed as it renders the application incompetent for being omnibus. The stated circumstances can be seen in several cases decided by this court and the Court of Appeal which some of them are the cases of **Julius Philibert Shadrack** and **Dr. Salum Ali Chambuso** (supra) cited in the submission of the counsel for the respondent. Another one is the case of **Songoro Hassan V. Mwajuma Hassan Songoro & Three Others**, Civil Revision No. 8 of 2022, HC at DSM where it was stated that: -

"The two or more applications may be combined together if they are interdependent, determined by the same court, made under the same law and determination is based on the same factor. However, that can be done if the prayers are not opposed to each other or where the application have different timeline and distinct consideration in their determination."

That being the position of the law the issue to determine here is whether the orders sought in the application at hand can meet the test or conditions stated in the foregoing referred cases for them to be entertained together in the same application. The court has found as stated at the outset of this ruling the applicants' application is made under various laws and it is seeking for various and distinct orders. The court has found that, although the orders the applicants are seeking in the first, third and fourth prayers are orders for extension of time but the sought extension of time is for different purposes and are sought under different laws.

It is not clearly stated anywhere in the application which provision of the law cited in the chamber summons is covering which relief sought by the applicant. However, the court has come to the view that, the application for extension of time to apply for stay of execution sought in the first prayer is governed by section 14 (1) of the Law of Limitation Act. As for the application for extension of time to file notice of appeal and to apply for leave to appeal out of time sought in the third and fourth prayers is governed by section 11 (1) of the Appellate Jurisdiction Act. The application for stay of execution sought in the second prayer is governed by Order XXXIX Rule 5 (1) of the Civil Procedure Code.

The stated position of the matter shows the orders the applicants are seeking from the court in the same application are different and they are made under different laws. The court has been of the view that, although it is stated in the case of the **Project Manager ES-KO-International Inc. Kigoma** (supra) that the application for extension of time to apply for stay of execution and application to stay execution can be considered in the same ruling but it cannot be lumped together with the application for extension of time to file notice of appeal and to apply for leave to appeal to the Court of Appeal as done in the present application.

The reason behind is because as rightly argued by the counsel for the respondent the stated orders are governed by different laws and even the factors required to be considered in determine the same are different. The court has found while the condition for granting extension of time under section 14 (1) of the Law of Limitation Act is that the court is required to be satisfied there is a reasonable or sufficient cause for granting extension of time, the grant for extension of time to file notice of appeal and to apply for leave to appeal out of time is left to the discretion of the court as it is stated the court may grant extension of time to file notice of appeal or to apply for leave to appeal.

The court has found that, the stated conditions are different from the conditions required for prayer of stay of execution because as provided under Order XXXIX Rule 5 (3) of the Civil Procedure Code, the court is required to be satisfied if the stay is not granted substantial loss may occur, the application has been made without unreasonable delay and the security for the due performance of the decree or order has been given. The court has been of the view that although the application for extension of time to apply for stay of execution can be dealt together with the application for stay of execution as they interrelated or interlinked but they cannot be sought together with the application for extension of time to file notice of appeal and to apply for leave to appeal out of time as they are not interrelated or interlinked.

The court has also found the argument by the counsel for the respondent that the application is supported by one affidavit which does not contain material facts pertaining to each of the four reliefs sought in the chamber summons was not in anyhow rebutted by the counsel for the applicants. The court has found the material facts deposed in the affidavit supporting the application are mostly in respect of the application for extension of time sought in the third and fourth prayers and there is

nowhere stated how the first and second prayers for stay of execution sought to be granted by the court is supported by the affidavit.

The position of the law as stated in the case of **Gervas Mwakafilwa & Five Others V. The Registered Trustees of Moravian Church in Southern Tanganyika**, Land Case No. 12 of 2013 (unreported) is that, a combine prayers in one application can be supported by one affidavit, but the affidavit must provide for all necessary facts that will give justification for granting each and every prayer in the chamber summons. The stated position of the law makes the court to find that, as some of the prayers made in application of the applicants are not supported by the material facts deposed in the affidavit supporting the application there is no way it can be said all the prayers lumped in the application of the applicants can be entertained together.

It is because of the foregoing stated reasons the court has found the first point of preliminary objection raised by the respondent is meritorious and deserve to be upheld. The above finding caused the court to come to the view that, there is no need of continuing to deal with the second point of preliminary objection because the first point of preliminary objection is sufficient enough to dispose of the matter before the court. Consequently, the first point of preliminary objection raised by the respondent that the

present application is omnibus is hereby upheld and the application is accordingly struck out with costs. It is so ordered.

Dated at Dar es Salaam this 22nd day of June, 2023



I. Arufani

**I. Arufani
JUDGE**

22/06/2023

Court:

Ruling delivered today 22nd day of June, 2023 in the presence of Mr. Simon Barlow Lyimo, learned advocate holding brief for Mr. Samson Edward Mbamba, learned counsel for the applicants and holding brief of Mr. Michael J. T. Ngalo, learned advocate for the respondent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

**I. Arufani
JUDGE**

22/06/2023