

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

MISC. LAND CASE APPLICATION NO.223 OF 2023
(Arising, from Misc. land Application No. 586 of 2022, by Mhina J)

NATHANIEL MWAKIPITI KIGWILA.....APPLICANT

VERSUS

MAGRETH ANDULILE BUKUKU.....RESPONDENT

RULING

Date of Last Order: 08.06.2023

Date of Ruling: 30.06.2023

T. N. MWENEGOHA, J.

This application was brought under **Sections 5(1)(c) and 11(1) of the Appellate Jurisdiction Act, Cap 141 R. E. 2019; Section 47(1) of the Land Disputes Courts Act, Cap 216 R. E. 2019 and Rules 45 (a) and 47 of Court of Appeal Rules of 2009.** The applicant sought among others, for the following reliefs; -

- 1. An order to extend time within which the applicant may apply for leave to appeal to the Court of appeal out of time.**
- 2. Upon enlarging the time, this court be pleased to grant leave to the applicant to file an appeal to the Court of Appeal of Tanzania.**

The Application proceeded by way of written submissions. Dr. Chacha Bhoke Murungu, appeared for the applicant, while the respondent enjoyed the legal services of Advocate Victor Mwakimi.

However, during the time of composition of this Ruling, I noted that, the Application is omnibus. After observing that impropriety in Chamber Summons and since the same in my view touches the legs on which the said Application stands, I, *suo motto* raised this issue to the parties and ordered them to address the Court on the competence of the instant Application. Both parties complied with the order and filed submissions to the effect. I have considered and used their arguments with regard to the issue raised in reaching this Ruling. However, their arguments will not be produced herein.

It is a settled principle of law 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 **see Daudi Lengiyeu versus Dr. David E. Shungu Civil Application. No. 28 of 2015, Court of Appeal of Tanzania at Arusha and Bibie Hamed Khalid versus Mohamed Enterprises Ltd and Two others, Civil Application. No. 6 2011, Court of Appeal of Tanzania, (both unreported).**

So, 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. It is obvious as it stands in the Application at hand; the two prayers in the applicant's, Chamber Summons are not related at all. They fall under two different domains, serving different purposes.

We have an Application for extension time in one hand, aiming at removing the obstacles (time limits) which have barred the applicant from pursuing his main goal (Application for the leave to appeal).

On the other hand, an Application for a leave follows that of extension of time if the former succeeds. It gives the applicant a green light to knock on the doors of our Superior Court of the Land.

In other words, an Application for extension of time comes first before any other Application, as it paves the way for further actions intended by applicant, including filing an Application for leave to appeal to the Court of Appeal, **see Khalid Simba versus L.H. Maleko, Land Revision No. 23 of 2019, High Court Land Division, at Dar ES salaam** (unreported).

The two reliefs therefore, do not go together, rather, they have to reach the Court on separate and independent occasions. By so doing, it helps the Court and the parties to focus on the specific issues that need to be determined. It goes without saying therefore, that the Court in the instant Application has been improperly moved. As it was stated by **Msofe J.A** in **Mohamed Salimin versus Jumanne Omary Mapesa, Civil Application No.103 of 2014, Court of Appeal of Tanzania, at Dodoma, (unreported)**, that....."*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 has held for time(s) without number, an omnibus application renders the application incompetent and liable to struck out*".

For the reasons stated herein above, I find this Application to be incompetently filed before this Court.

Eventually, the same is struck out with costs.

Ordered accordingly.




T. N. MWENEGOHA

JUDGE

30/06/2023