

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

**MISC. LAND APPLICATION NO. 224 OF 2023**

**JUMA ABDULRAHMANI KIPANGUSI (Administrator**

**of Estate of Mwanjia Hassan Mfaume Songoro) .....APPLICANT**

**VERSUS**

**REGISTRAR OF TITLES.....1<sup>st</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>nd</sup> RESPONDENT**

**THE REGISTERED TRUSTEES OF MASJID**

**MWINYIMKUU.....3<sup>rd</sup> RESPONDENT**

**R U L I N G**

*Date of last Order:12/06/2023*

*Date of Ruling: 17/08/2022*

**K. D. MHINA, J.**

By a chamber summons taken under section 14(1) of the Law of Limitation Act (Cap 89 R.E. 2019), sections 99(l) b and f, (2) b and c of the Land Registration Act (Cap 334 R.E 2019) and section 95 of the Civil Procedure Code (Cap 33 R.E 2019), the applicant, Juma Abdulrahman Kipungusi (Administrator of the estate of Mwanjia Hassan Mfaume Songoro)

instituted this application against the respondents, Registrar of Titles, the Attorney General and the Registered Trustees of Masjid Mwinyimkuu.

The applicant, *inter-alia*, is seeking the following orders: -

*1. That this Honourable Court be pleased to extend time within which the Applicant may lodge an application for rectification of the land register pursuant to section 99(1)(b) and/or section 99(1)(f) of the Land Registration Act (Cap 334 R.E 2019)*

*2. That this Honourable Court be pleased to declare that the purported disposition of Certificate of Title No. 81680, L.O. 253988, Plot 32, Block 9, House No. 23 Tosheka Street, Magomeni Area, Dar es Salaam from the late Mwanjia Hassan Mfaume Songoro to the 3rd Respondent was void.*

*3. That this Honourable Court be pleased to declare that the memorials made in the name and in favour of the 3rd Respondent under Certificate of Title No. 81680, L.O. 253988, Plot 32, Block 9, House No. 23 Tosheka Street, Magomeni Area, Dar es Salaam were registered by the 1st Respondent contrary to the provisions of the Land Registration Act.*

*4. That this Honourable Court be pleased to order the 1st Respondent to rectify the Land Register in respect of Certificate of Title No. 81680, L.O. 253988, Plot 32, Block 9, House No. 23 Tosheka Street, Magomeni Area, Dar es Salaam so as to revert to the name of the late Mwanjia Hassan Mfaume Songoro in order for*

*the Applicant to continue with his duties as an Administrator of the estate of the late Mwanjia Hassan Mfaume Songoro.*

*5. Any other order(s) that this Honourable Court may deem fit and just to grant.*

In response to the application, the respondents countered it through a preliminary objection predicated on the following grounds.

The first and 2<sup>nd</sup> respondents raised that;

- i. The application is not tenable for being filed prematurely.*
- ii. The application is untenable in law for being omnibus as it contains more than one prayer governed by two different provisions of the law.*

While, the 3<sup>rd</sup> respondent raised that;

- i. This Court has no jurisdiction to entertain this application.*

At the hearing, the applicant was represented by Ms. Clara Mramba and Mr. Lameck Muganyizi, learned advocates, whereas the 1<sup>st</sup> and 2<sup>nd</sup> respondents were represented by Ms. Frida Mollel, learned State Attorney while the 3<sup>rd</sup> respondent by Mr. Mussa Burhan, also a learned advocate.

At the hearing Ms. Mollel abandoned the first limb of preliminary objection and proceeded to submit on the second limb that the applicant's prayers filed in chamber summons contains five prayers. The prayers are for

the seeking for extension of time to apply for rectification of a land, rectification of land register and declaration that the deposition of the title was void, also to declare the memorial was not proper.

Ms. Mollel submitted that due to those prayers be contained in the same chamber summons then the application is omnibus. The applicant was supposed to file first application for extension of time and if granted then he can apply for other prayers.

She concluded by submitting that the application which is omnibus is defective as per the decision of the Court of Appeal in **Ali Chamani vs Karagwe District Council**, Civil Application No. 411/04 of 2017 (Tanzlii)

On his side Mr. Burhan submitted that for this court to have jurisdiction to determine the matter there should not be any previous dispute between the applicant and the 3<sup>rd</sup> respondent regarding the suit land. He submitted and mentioned a number of cases between the applicant and 3<sup>rd</sup> respondent.

Mr. Burhan mentioned the previous matters as follows; Application No. 290/2008 was filed at DLHT for Kinondoni whereby the applicant was claiming for ownership of disputed house against the 3<sup>rd</sup> respondent and the matter was dismissed for want of prosecution on 20/1/2012.

On 2013, the applicant filed an application for the restoration of a dismissed application. That application was dismissed on 4/12/2013 for being time barred. Again in 2014 the applicant filed before DLHT of Kinondoni, Misc. Land Application No. 38/2014 seeking for extension of time to file restoration of Application No 290 of 2008. That application was dismissed for the reason that the Tribunal was functus officio. The applicant was aggrieved and he appealed to this court vide Land Appeal no 88 of 2014. The appeal was dismissed for want of merits on 29/10/2015.

After that he filed application 64/2016 seeking leave to appeal to Court of Appeal. The application was dismissed for want of prosecution.

On the other hand, on 2018, the 3<sup>rd</sup> respondent filed application No. 405/2018 praying for a vacant possession against the applicant. The applicant also raised a counter-claim with no. 123 of 2018. Then the 3<sup>rd</sup> respondent withdraws the application, then the DLHT dismissed the counter claim on 25/11/2020 because the prayers sought in the counter claim were the same prayers in application no. 290/2008.

Thereafter the applicant filed an application for extension of time number 76 of 2021 before this court for filing an appeal out of time, and on 22/10/2021 the application was dismissed for want of merits.

He concluded by submitting by filing this application for rectification of the land register, the applicant is using the back door while he failed to prosecute the matter at the Tribunal.

Responding to the submission in chief Mr. Muganyizi started to reply regarding the jurisdiction issue by submitting that the issue of jurisdiction was misconceived and did not qualify to the conditions elaborated in **Mukisa Biscuit vs West End Distributors.**

Because there was nowhere in the submission by the 3<sup>rd</sup> respondent the point of law has been raised. No statutory provision or case law that had been violated.

Though Mr. Muganyizi admitted that jurisdiction is a creature of the statute as per **Aloyce James Kasawa vs William Mufungo Mwangwa,** Civil Reference No. 5/2018 and **Yohana Balole vs Anna Benjamin Malongo** Civil Appeal no. 18 of 2020

But in this application the 3<sup>rd</sup> respondent failed to point the law which prohibit the court to rectify the land register.

He narrated that the provision of law which gives this court the jurisdiction to grant prayers 2-4 in the chamber summons is section 99 of the Land Registration Act. While prayer no.1 is section 14 (1) of the Law of Limitation Act. The general jurisdiction to hear the government matters is S. 7 of Government Proceeding Act. The counsel for the 3<sup>rd</sup> respondent cited numerous court decision, but none of the had nothing to do with the rectification of the land registers. Further, the parties are different.

Regarding the objection of omnibus, Mr. Muganyizi submitted that in **Pride Tanzania Ltd vs Mwanzani Kasatu Kasamia**, Misc Commercial Cause No 230 of 2015 extensively discussed how the omnibus application can be treated and it stated that no law prohibits the omnibus application.

As to whether the prayers are unrelated, he submitted that the chamber summons count had five prayers, one prayer fall under Law of Limitation Act, while four prayers fall under the Land Registration act. And the law allows the chamber to contain prayers with two different laws as per

Simba **Mtoto Transport vs Siad Mwaluwala**, Misc Civil application No. 391/2022.

Therefore, he prayed for the preliminary objection to be dismissed but, in the alternative, if court discovered that the application is omnibus to proceed with extension of time and struck out the additional prayer. To bolster his argument, he cited **Ally Said Said vs Idd Athuman Ndaki**, Civil Application No 450/17 of 2021.

In a brief rejoinder Ms. Mollel reiterated her submission in chief and insisted that as per the cited case of **Pride Tanzania (Supra)**, the application is omnibus because first the applicant prayed for an extension and then prayed for the declaration that the disposition was void. She submitted that the prayers are unrelated. The same was also held in **Allan Kaseke (supra)** that prayers should be interrelated or interlinked but in this matter the prayers are not related. Therefore, the application is omnibus and it should be struck out with costs.

On his side Mr. Mussa the P.O raised based on the pleadings filed by the applicant and it is not necessary that each point of law regarding jurisdiction should be based on statutory provision.



Further it was not in dispute that there were previous matters between the applicant and the 3<sup>rd</sup> respondent. The applicant had already filed the matter which he failed to prosecute, therefore he could not file another matter under the different law, as a matter of practice he is barred.

He concluded by submitting that since the applicant failed to prosecute on the ownership of the disputed premises then he could not apply for the rectification of the register in the circumstances of the matter.

Having considered the pleadings and submissions from both parties through their respective counsel, I will now turn to determine viability of the points raised and I will start with the P.O regarding that the application is omnibus. And the controversy between the parties is whether the prayers contained in the chamber summons

In deliberation, the entry point is the cited case of **Pride Tanzania Ltd** (Supra), where omnibus applicants are allowed. It was held that;

*"..the combination of two applications is not bad in law. I know no law that forbids such a course".*

Therefore, in principle, no law prohibits combining more than one prayer in the chamber summons.

That is a general principle, but there is a limitation on that permission to combine one or more prayers in the application. The condition is that such combined prayers must be interrelated or interlinked. Otherwise, if the application contains incompatible combined prayers is liable to be termed as an omnibus, see **Mohamed Salimin v. Jumanne Omary Mapesa**, Civil Application No. 103 of 2014, CAT -Dodoma (unreported)

In the instant application, the issue between the parties is whether or not the prayers contained in the chamber summons are interrelated or interlinked. This should not detain me long because as I alluded to earlier If you look at the chamber summons the applicant seeks five prayers. The first prayer was for extension of time. The second prayer is for the declaration that disposition of the Certificate of Title No. 81680, was void. The third prayer, is for the declaration of memorial made by Registrar of Titles was contrary to the provision of Land Registration Act. The fourth, is to order the 1<sup>st</sup> respondent to rectify the land register.

The question is, are the prayers above interlinked or interrelated with each other? The answer, in my considered view is no. They are four different prayers, each having its own purpose with regard to the dispute at hand. Each also requires different path for its determination. They are

incompatible, they can not go together in the same chamber application. To declare a disposition of the title by the deceased Mwanjia Hassan Mfaume Songoro as void need a different path and evidence to test whether the disposition was void or valid. To declare the memorials made in favour of the 3<sup>rd</sup> respondent by the 1<sup>st</sup> respondent and to rectify the land registrar need a separate path, that means this court has to look at the Registrar decision. Therefore, as I hold above the prayers are not interrelated.

By the way in addition what in principle the applicant is praying is for the rectification of the Land Register for the Land already registered by the 1<sup>st</sup> respondent. Therefore, he is challenging the decision of the Registrar of Title. Since, there is already a decision of the Registrar, the proper channel is explained under section 102 (1) of The Land Registration Act,

*102.-(1) Any person aggrieved by a decision, order or act of the Registrar may appeal to the High Court within three months from the date of such decision, order or act.*

Flowing from above since the prayers contained in the chamber summons are not interrelated then the instant application is incompetent. The prayers cannot be lumped together in one application, and thus the

application is omnibus. See **Rutagatina C.L vs. The Advocates**

**Committee & Another, Civil** Application No. 98 Of 2010 (Unreported)

On the remedy, the counsel had rival arguments, while Mr. Burhan submitted that the remedy is to strike out; Ms. Mansoor contended that the remedy is to proceed with the relevant prayer.

On the remedy, the counsel had rival arguments, while Ms. Mollel submitted that the remedy is to strike out the application; Mr. Muganyizi was of the view that the Court should proceed with the prayer of extension of time and struck out other prayers.

On this, the Court of Appeal has already decided in several cases, such as in the cited case **Mohamed Salimin** (Supra), where it was held that;

*“An omnibus application renders the Application incompetent and liable to be struck out.”*

Therefore, the 1<sup>st</sup> limb of the preliminary is hereby successful raised and this court upheld the same by holding this application is incompetent for being omnibus.

Further, since the first limb of objection dispose the application, I don't see the reason to deliberate and determine the objection raised by Mr. Burhan

Consequently, the application is accordingly strike it out. Since the applicant filed this application under legal aid, I order no costs.

It is so ordered.



  
**K. D. MHINA**  
**JUDGE**

**17/08/2023**