

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

**MISC. LAND CASE APPLICATION NO. 435 OF 2023**

*(Originating from Land Application No. 41 of 2009 & Land Application No. 183 of 2014,  
both from the District Land and Housing Tribunal of Kinondoni)*

**RAPHAEL YAKOB NDITI..... APPLICANT**

**VERSUS**

**MAHAMOOD SALUM CHIBANGO.....1<sup>ST</sup> RESPONDENT**

**MBOGO AUCTION MART AND REAL AGENCY  
COMPANY.....2<sup>ND</sup> RESPONDENT**

**DAGOBERT JOHN (the Legal Administrator of  
ANSILA KAPINGA) .....3<sup>RD</sup> RESPONDENT**

**R U L I N G**

*Date of Last Order: 02. 08. 2023*

*Date of Ruling: 28. 08. 2023*

**T. N. MWENEGOHA, J.**

The instant application has the following prayers; -

- 1. That, this Court be pleased to extend time within which the applicant may apply for this Court to exercise its revisional jurisdiction against the record in land Application No. 41 of 2009 and the Execution proceedings thereof in Land Application No. 183 of 2014, by District Land and Housing Tribunal for Kinondoni District at Mwananyamala, dated on 5<sup>th</sup> May 2014;**

- 2. That, this Honourable Court may be pleased to call for and examine the records and decision of Land Application No. 41 of 2009 by District Land and Housing Tribunal for Kinondoni District at Mwananyamala and its execution proceedings in Land Application No. 183 of 2014 and make findings that the Chairman of the Tribunal has in exercise of its jurisdiction, acted illegally and with material irregularity; and/or an error material to the merit of the case, which has occasioned injustice to the applicant;**
- 3. Costs of this Application; and**
- 4. Any other order this Court may deem fit to grant.**

This Application came under **Section 14 of the Law of Limitations Act, Cap 89 R. E. 2019, Sections 43(1)(a),(b) and 43(2) of the Land Disputes Courts Act, Cap 216, R. E. 2019 and Sections 3A(1), 3B(1)(c) and 95 of the Civil Procedure Code, Cap 33 R. E. 2019.** The same was supported by the affidavit, sworn by the applicant himself, Raphael Jacob Nditi.

When the respondents were served with the Application, the counsel for the 1<sup>st</sup> respondent, Mr. Joseph Kipeche, raised two preliminary objections on point of law that; -

- i. The Application is time barred;**
- ii. The Application is bad in law for being omnibus.**

In his written arguments in favour of the 1<sup>st</sup> objection, Mr. Kipeche was of the view that, as the Application has two prayers, one is for extension of time and the other is for Revision, the Application for Revision of the cases above named, Land Application No. 41 of 2009 and Land Application No. 183 of

2014 is time barred. **As per Item 21 of the Schedule of the Law of Limitations Act, Cap 89, R. E. 2019**, the same provides for a period of 60 days for an Application for Revision to be filed. The impugned Decisions were delivered on the 05/05/2014 and 23/09/2019 respectively. Hence, the prayer is hopelessly time barred.

On the second objection that, the Application is an omnibus one, it was contended by Mr. Kipeche that, the chamber summons contains two Applications, an Application for extension of time and an Application for Revision. The two Applications so stated, cannot be lumped up together in one chamber summons. What the applicant did is wrong. He cannot apply for a Revision before the Court has extended the time to do so. The Applications are enabled by different provisions of law. That, after all, an Application for extension of time is not limited by time, while the position is different for an Application for Revision.

He further argued that the Applications are registered differently and each has its own fees payable accordingly. Also, the consideration to be taken into account before allowing or denying the two Applications earlier mentioned are different. That, in an Application for extension of time, an applicant has to give sufficient reasons for delay and account for the days he delayed, while in Revision, the Court will look on error's material on the merit of the case, involving injustice. To cement his arguments, Mr. Kipeche cited the case a number of cases, including the case of **Abas Hamis versus Najima Hassan Ally Kanji, Misc. Land Case Application No. 140 of 2017, High Court of Tanzania, Land division at Dar es Salaam**, and **Rutagatina CL versus Advocate Committee, Misc. Civil Application No. 98 of 2010, Court of Appeal of Tanzania, at Dar es Salaam, (unreported)**.

In reply, Advocate Beatus Malima for the applicant, started with the 2<sup>nd</sup> objection. He was of the view that, the 1<sup>st</sup> respondent's counsel's submissions on this ground are misconceived on three main reasons. Firsts, the counsel for the 1<sup>st</sup> respondent has used a wrong test. That, the test for omnibus Applications at the High Court is different from that of the Court of Appeal. That, the cases cited by the counsel for the 1<sup>st</sup> respondent, talks about the position of the Court of Appeal. As for the High Court, the test for omnibus Application is found in the case of **MIC Tanzania Limited versus Minister of Labour and Youth Development and Another**; where the Court looks on whether the prayers are not diametrically opposed to each other and whether one prayer follows the other prayer. Secondly, he argued that, the authorities relied by him are not applicable at the High Court, rather before the Court of Appeal of Tanzania, as same are in line with the Court of Appeal Rules. Above all, this Court has already decided that an Application for Revision subjected to extension of time is allowed as stated in **Martin Matiku Nyiraha versus Kikombe Masuka & Another, Land Revision No. 25 of 2019, High Court of Tanzania at Dar es Salaam**.

On the 1<sup>st</sup> objection, the applicant's counsel maintained that, since it is allowed that an Application for Revision subject to grant of extension of time is proper, therefore, the arguments by the 1<sup>st</sup> respondents counsel are devoid of merits. He referred the Court to the case of **Msafiri Said Omary versus Ally Mohamed Mbega, High Court of Tanzania at Dar es Salaam, (unreported)**. He insisted that, the 1<sup>st</sup> respondent's counsel's arguments on this point are misnomer in law because the prayer for Revision is dependent on the prayer for extension of time. If the prayer for extension of time is denied, obviously the prayer for Revision will fail.

In rejoinder, Mr. Kipeche reiterated his submissions in chief.

Having gone through the submissions of the counsels for the parties, it's time to determine whether the objections by the counsel for the 1<sup>st</sup> respondent have merits or not.

I will start with the 2<sup>nd</sup> objection as done by Mr. Malima. I agree with Mr. Kipeche when he said that, this is an omnibus Application. It is because the chamber summons contains two prayers joined up together. As argued in his submissions, the law is settled, joining two prayers in one Application is allowed. Provided that, such prayers must be interlinked or interrelated, see **OTTU on behalf of P.L Asenga & 106 others, Super Auction Mart and Court Brokers and Others versus AMI (Tanzania) Limited, Civil Application No. 20 of 2014, Court of Appeal of Tanzania, Unreported).**

If the same are different or originate from different provisions of law, as in the case at hand, joining them makes the application incompetent. This was rightly observed in **Rutagatina CL versus Advocate Committee, supra**, that,

*"So since the applications are provided for under different provisions it is clear that both cannot be "lumped" up together in one application, as is the case here".*

This has been the position guiding our Courts as treatment of omnibus Applications is concerned. However, I disagreed with the arguments brought forward by the applicant's counsel on this issue. He insisted that, the position afore given is the practice of the Court of Appeal of Tanzania, the High Court has its own model of practice concerning omnibus Applications. These arguments are highly misconceived. We have a number of authorities in the High Court that have taken and applied the said position on different occasions. For example, the case of **Godfrey Shoo and Others versus**

**Mohamed Said Kitumbi, Misc. Land Application No. 109 of 2020, High Court of Tanzania (unreported),** citing in approval the case of **Ally Abbas Hamis versus Najma Hassan Ally Kanji, supra,** it was observed that:

*"Lumping of several prayers in a single application which those prayers are also different; and the considerations to be taken into account are different, the conclusion is not hard to find, but to conclude that the application is omnibus".*

Therefore, and on the basis of the cited authorities here in above, I find the Application at hand to be unmaintainable. The two prayers joined in the chamber summons are totally different hence they cannot be lumped up together in a single Application. As argued by Mr. Kipeche, each enjoys its own characteristics and has to be dealt with separately. The Application for extension of time has to start. If the same is finalized and a leave to enlarge time is given, the intended action is allowed to proceed. In our case, an application for revision is barred by time, it cannot be brought in court unless that bar is lifted. That is what the phrase *"application for revision subject to grant of extension of time is allowed"* real means, as used by the applicant's counsel in his submissions. Hence, I find the 2<sup>nd</sup> objection to have merits. The same is sustained. For those reasons, I will not discuss the 1<sup>st</sup> objection. My findings in the 2<sup>nd</sup> objection are capable of disposing the entire application.

Eventually, the application is struck out with costs.

It is so ordered.



**T. N. MWENEGOHA**  
**JUDGE**  
**28/08/2023**