

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

MISC LAND APPLICATION NO. 441 OF 2023
(Arising from Misc. Land Application No. 607 of 2022 Land Division)

PRAKSEDA BARNABAS (Legal representative of
HARRISSON MANDALI).....**1ST APPLICANT**
MEKEFASON MANDALI**2ND APPLICANT**
REHEMA R. KANGE.....**3RD APPLICANT**
MARIAM MAGERO**4TH APPLICANT**
EZRA J. MATOKE**5TH APPLICANT**
MARY KILIAN JOSEPH MCHAU (Legal representative of
KILIAN J. MCHAU).....**6TH APPLICANT**
ABDALLAH J. MVUNGI.....**7TH APPLICANT**
ELIHURUMA MREMI.....**8TH APPLICANT**
RUZIA 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**

RULING

09 to 11th October, 2023

This application is made under the enabling provision of section 5(1)(c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 and rule 45(a) of the Tanzania Court of Appeal Rules, 2009 (as amended)

The Applicants mentioned above are seeking for leave to appeal against the decision of this Court dated 22/06/2023 in Misc. Land Application No.

607/2022, which was struck out after sustaining an objection that it was omnibus for lumping together multiple prayers.

In the affidavit in support of the application, specifically paragraphs number six, seven and eight, the Applicants grounded that: One, the ruling of this Court did not rule out whether or not the affidavit sufficiently disclose the facts supporting all the prayers was to be determined as a pure point of law or otherwise and did not rule if it is the combination of the prayers in one application or the jurisdiction of this Court to grant the prayers which determine whether the application is omnibus or otherwise; Three, for lack of clarity of the ruling on the what constitutes an application to be omnibus it cannot be known what is it meant by an omnibus applications, unless and until the Court of Appeal gives a proper direction.

In the counter affidavit, the Respondent Counsel deponed that paragraphs six, seven and eight contain legal arguments, conclusion and opinions, asserted further that the decision of this Court that the application (sic, Misc. Application) No. 607/2022 was omnibus was correct. He stated that there are no sufficient or good grounds advanced by the Applicants to grant leave sought.

The Respondent filed a notice of preliminary objection that: One, the application is incompetent for want of the Applicant's supporting affidavit; Two, the supporting affidavit is incurably defective for containing extraneous matters by way of legal and factual arguments or both opinion and conclusions under paragraphs five, six, seven, eight and nine.

In view of the above points, I commissioned for the objections above to be argued along the merit of application to save time. However, the Respondent did not file submission in support of their objections. As such the above objections are taken as having been abandoned. Therefore, are struck out of the records.

Arguing on the merit of the application, Mr. Samson Edward Mbamba learned Counsel for Applicants submitted that reasons and grounds for this application are contained in paragraphs five, six, seven, eight and nine of the affidavit. The learned Counsel deduced those grounds into two, namely; One, whether the point that when the application combines more than one prayer, the application becomes incompetent for the reason that the affidavit is insufficient to support all the prayers; Two whether the examination of insufficiency of the facts in the affidavit in support of the application can be prosecuted by way of a preliminary objection or by merits of the application.

He submitted that the above points have been raised because there are already inexistence of various decisions of the Court of Appeal which hold that the insufficiency of the facts in the affidavits cannot be a pure point of law. He cited **African Development Bank vs. M/s East African Development Bank and Another** Civil Application No. 122/2010 CAT Dar es Salaam; **Hammers Incorporation Co. Ltd vs. The Board of Trustees of the Cashewnut Industry Development Trust Fund**, Civil Application No. 93/2015 CAT.

At leave stage, this Court merely embark on as certaining as to whether there is an arguable grounds which require the attention of the apex Court. To my view the points and grounds raised by the Applicants are worthy for consideration by the court of Appeal. Regard being a concern by the learned Counsel for Applicants that on account of lack of clarity on the points above, the Applicants are left with no guidance hence have to appeal will enable attain guidance to the matter.

The application is granted. No order for costs.



E.B. LUVANDA
JUDGE
11/10/2023

Ruling delivered at 08:56 hours through virtual court, Ms. Aziza Msangi learned Counsel for Applicants nor Mr. Simon Lyimo learned Counsel for Respondents attended.




E.B. LUVANDA
JUDGE
11/10/2023