

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

MISC. LAND CASE APPLICATION NO.569 OF 2023
(Arising from Land Case Application No. 336 of 2021)

AFRICA ENERGY LIMITED.....APPLICANT

VERSUS

BEN SAMSON.....RESPONDENT

R U L I N G

Date of Last Order: 19.09.2023

Date of Ruling: 19.10.2023

T. N. MWENEGOHA, J.

This Application was brought under **Section 11(1) of the Appellate Jurisdiction Act, Cap 141, R. E. 2019, Section 14(1) of Law of Limitation Act, Cap 89 R. E. 2019, Order IX Rule 6 and section 95 of the Civil Procedure Act, Cap 33 R. E. 2019.** The applicant sought among others, for the following orders; -

- 1. That, the Honourable Court be pleased to extend the time within which to make an Application for setting aside dismissal order of the Misc. Land Application No. 336 of 2021, dated 09th November 2021.**
- 2. That, in the event the Honourable Court extends the time in prayer number 1 above, the Honourable Court set aside the dismissal order of Misc. Land Application No. 336 of 2021, dated 9/11/2021.**

3. That, in the event the Honourable Court sets aside the dismissal order in prayer number 2 above, the Misc. Land Application no. 336/2021, be restored and proceed to its conclusion.

The respondent on the other hand, objected the Application for being omnibus and on the fact that the affidavit contains a defective verification clause. This Court then ordered the Objection and the Application to be heard simultaneously, by way of written submissions. As the rules direct, the Preliminary Objection was disposed first.

Mr. Samwel Shadrack Ntabalila, appeared for the respondent. His submissions in favour of the Objection were that, the Application is omnibus because the Chamber Summons contain three different prayers, while being supported by a single affidavit. Therefore, the Application is incompetent before this Court as stated in **Mohamed Salimin versus Omary Mapesa, Civil Application No.103/2014, Court of Appeal of Tanzania (unreported)**. He went on to argue further on the 2nd Objection that, the verification clause in the applicant's affidavit is defective owing to the reasons that, the verifier did not state the source of information stated under paragraphs 17, 18, 22,23 and 25.

In reply, Mr. James Bwana, for the respondent insisted that, the respondent's counsel failed to provide any legal basis for his Objection regarding an omnibus Application. Therefore, the same is not based on any point of law. That, the case of **Mohamed Salimin versus Omary Mapesa**, (Supra) is distinguishable to this case, as the prayers were not interrelated. That, in this Application, the prayers are interrelated as stated in **Mic Tanzania Limited versus Minister for Labour and Youth development, Civil Appeal No. 103/2004, Court of Appeal**,

Dar es salaam, as quoted in **Msafiri Omary versus Ally Mbega, (PC) Civil Appeal No. 72 of 2017(unreported)**. It was his view that, the Objection is therefore, devoid of merits. He had the same view to the 2nd objection on defective verification clause. That, the requirements of stating the source of information by the deponent was met and the Objection is on pure facts, not on point of law.

Having heard the submissions of the counsel for the parties with regard to the Objections raised, I now have to determine whether the same have merits or not. If the objections are found to be meritorious, this Application will meet its end immediately, and if the objection are overruled, then we will go into discussion of the merits or otherwise of the present Application.

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 Appl. No. 6 of 2011, (both unreported)**.

The question in need of an answer in the Application at hand is whether the prayers listed in the applicant's Chamber Summons are interrelated and if the same can conveniently be determined together. The answer in my view is the negative. In his first prayer, the applicant is seeking for an extension of time, to enable her to make another Application for setting aside dismissal order given in Misc. Land Application No. 336 of 2021, dated 09th November 2021. That is to say, the applicant is barred by time to seek any remedy regarding her case, unless that barrier is lifted. Hence,

the Application to extend the time for further actions is independent and separate from an Application to set aside the dismissal order (prayer number 2 in the Chamber Summons) and the restoration of Misc. Land Application No. 336 of 2021, dated 09th November 2021(prayer number 3). In Ally **Abbas Hamis versus Najma Hassan Ally Kanji, Misc. Land Application No. 140 of 2017, High Court Land Division at Dar es Salaam (unreported)**, 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 and from the same reason I have no other option than to struck out with costs the omnibus Application"

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.

As noted above, the Application for extension of time comes first before any other Application. It paves the way for further actions, including filing an Application for setting aside a dismissal order and restoration of Misc. Land Application No. 336 of 2021, dated 09th November 2021. It goes without saying therefore, that the Court in the instant Application has been improperly moved. As 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.....

"..... 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".

Guided by the authorities cited above, I sustain the 1st objection and proceed to declare this Application to be incompetently filed before this Court. Further, these findings are in my view, capable of disposing the entire Application. In that case, I will not bother to discuss the remaining objection.

Eventually, the Application is hereby struck out with costs.

Ordered according.




T. N. MWENEGOHA

JUDGE

19/10/2023