

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(DAR-ES-SALAAM DISTRICT REGISTRY)**  
**AT DAR-ES-SALAAM**  
**MISCELLANEOUS CIVIL APPLICATION NO. 391 OF 2022**  
**SIMBA MTOTO TRANSPORT ..... APPLICANT**  
**VERSUS**  
**SAID MWALUWALA ..... 1<sup>st</sup> RESPONDENT**  
**MARAMBO A. MARAMBO** (As administrator of the estate of  
**SHIJA ZAKARIA) ..... 2<sup>nd</sup> RESPONDENT**  
(Originating from Civil Case No. 2 of 2008 Resident Magistrates' Court of Coast Region  
at Kibaha)

**RULING**

Date: 28/03 & 08/05/2023

**NKWABI, J.:**

Before this Court, the applicant is asking to be availed with the following orders as follows:

1. Extension of time limited by law and allow the applicant to file an application for revision out of time save for the powers vested to the Court to intervene suo motu.
2. Sequel to prayer (1) above, this Court be pleased to call for the records, proceedings, judgment and decree of the Resident Magistrates' Court of Kibaha at Kibaha in Civil Case No. 2 of 2008 so as to ascertain its legality, correctness, propriety and or otherwise of the proceedings, judgment and decree.

3. Declaration that the proceedings, judgment and decree of the trial court in respect of Civil Case No. 2 of 2008 to be illegal, unlawful and improper in law on reason more stated and particularized in the affidavit attached and proceed to set them aside.
4. Costs be provided for; and
5. Any other order(s) and/or relief(s) as the honourable Court may deem just and fit to grant.

The application is brought under the provisions of section 14(1) of the Law of Limitation Act Cap 89 R.E. 2019; Section 44(1) and (2) of the Magistrates' Courts Act, Cap 11 R.E. 2019 and Section 71 (1) (a), (c) & (3) Of the Civil Procedure Code, Cap 33 R.E. 2019 and any other enabling provisions of the law.

The 2<sup>nd</sup> respondent filed a counter-affidavit, along with it he raised a preliminary objection on two points of legal objection which are:

1. The applicant's application is not tenable since there is no avenue for the applicant to file an application for revision.
2. The applicant's application is bad in law for being omnibus application.

The preliminary objection be argued by way of written submissions. Mr. Tumaini Mgonja, learned counsel for the 2<sup>nd</sup> respondent argued the

preliminary objection. Mr. Victor Joseph Mhana, learned counsel represented the applicant. No rejoinder submission was filed.

On the first limb of the preliminary objection, it was argued for the 2<sup>nd</sup> respondent that the application for extension of time to file an application for revision against an ex-parte judgment in Civil Case No. 2 of 2008 is incompetent as it is barred by law because there are other legal avenues to challenge the decision. They are either appeal or application for setting aside the ex-parte judgment. The counsel for the respondent cited **Naima Suleiman (Suing as a next friend of Zakaria Omary Salumu Shigela (minor) v Idu Busanya Mugeta (Administrator of the late Lazaro Busunya & 5 Others**, Civil Application No. 538/8 of 2019 CAT where it was stated that:

*"Where there is already an alternative remedy provided by the law, the applicant cannot properly move the Court to use its revisional jurisdiction.*

*In the same vain, as rightly submitted by the counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents, the applicant has a right to assert her right over the suit premises by filing objection proceedings. It is common ground that where there is*

*already an alternative remedy provided by law, like in the matter at hand, the applicant cannot properly move the Court to use its revisional jurisdiction. In view of the above, I find that the applicant has failed to advance any reason for the extension of time let alone good cause for the Court to exercise its discretion. Accordingly, the application is dismissed with costs for lacking merit."*

The case of **Dangote Industries Ltd Tanzania v. Warnercom (T) Limited**, Civil Appeal No. 13 of 2021 CAT (unreported) where it was held that:

*"In our considered opinion therefore, the provision of section 70(2) of the CPC clearly and unambiguously provides for an automatic right to appeal against an ex-parte judgment ... the right to appeal against an ex-parte decree is automatic and does not depend upon there being a prior proceeding to set aside the ex-parte judgment."*

The counsel for the 2<sup>nd</sup> respondent rested his submission on the 1<sup>st</sup> point of objection by stating that the application at hand is rendered nugatory hence incompetent.

In reply submission, the counsel for the applicant argued that the since they are pointed illegalities in the proceedings and judgment of the trial court, extension of time is a remedy as per **Prisca Chacha & 2 Others v. Bwiso Mwita Matiko**, Land Revision No. 3 of 2020 HC (unreported) and for exceptional grounds revision is done as per **Hallais Pro-Chemie v. Wella A.G.** [1996] TLR 269 where it was stated that:

*"I find it settled that a party to the proceedings before court subordinate to this Court may institute revision proceedings in the following circumstances; one where, although he has right of appeal, sufficient reason amounting to exceptional exists, which must be explained; two, where there is no right to appellate process has been blocked by judicial process; three, where there is no right of appeal exist; or four, where a person was not party to the relevant proceedings."*

For the applicant, it is claimed that in this case, the appeal process has been blocked by judicial process hence the remedy sought. The complaint sought to be revised are administrative errors by the trial magistrate which need supervisory guidance and directives. It was added that the 2<sup>nd</sup> respondent is arguing on the merits of the main application when requiring sufficient



reasons for extension. He also complained for failure by the counsel for the 2<sup>nd</sup> respondent to fail to supply him with the copies of unreported decisions referred to in the submissions and they are distinguishable.

I have carefully examined the submissions of both counsel in respect of the first branch of the preliminary objection I am not persuaded by the argument by the counsel for the applicant that the process of appeal was blocked by judicial process. I am aware that at this stage of preliminary objection, I am not permitted to deal with the merits of the application. But even at the stage of a preliminary objection, the court is enjoined to go through the pleadings and decide whether the preliminary would be sustained or overruled. That happens when for instance a plaint is claimed not to disclose a cause of action. Now, the applicant did not aver any fact in respect of his claim in submission that the process of appeal was blocked by judicial process. I cannot be criticized for dealing with the matter on merit because, that complaint is not found on the affidavit, as I have come to that conclusion when I perused the affidavit. Whether that complaint is merited or not would have been dealt with after hearing the application in merits.

Having said as such, I rule that indeed, this application is barred by law as the applicant had other avenues to pursue her rights as indicted by the counsel for the 2<sup>nd</sup> respondent in his submissions, I need not mention the same. The case of **Naima Suleiman** (supra) is applicable in the circumstances of this application while the case of **Hallais Pro-Chemie** (supra) is distinguishable in the circumstances of this application. In the premises, the first limb of the preliminary objection is sustained.

Arguing the 2<sup>nd</sup> limb of the preliminary objection, the learned counsel for the 2<sup>nd</sup> respondent maintained that only interlinked applications may be jointly entertained as per the decision of the Court of Appeal of Tanzania in **MIC Ltd v. Ministry for Labour and Youth Development & AG**, Civil Application No. 103 of 2004. But the present application with omnibus applications is governed by distinct laws namely the Law of Limitation Act, Cap. 89 R.E. 2019 and the Civil Procedure Code, Cap 33 R.E. 2019. That is also contrary to Order XLIII Rule 2 of the Civil Procedure Code which require every application to be brought by a chamber summons supported by an affidavit. He cited **Ali Chamani v. Karagwe District Council & Another**, Civil Application NO. 411/4 of 2017 (unreported) where it was ruled 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 of an omnibus application renders the application incompetent and is liable to be struck out."*

He cited also **Gervas Mwakafwala & 5 Others v. The Registered Trustees of Morovian Church in Southern Tanganyika**, Land Case No. 12 of 2013 (unreported) where it was stated that:

*"I must hasten to say, however, that I am aware of the possibility of an application being defeated for being omnibus especially where it contains prayers which are not interlinked or interdependent. I think where combined prayers are apparently incompatible or discordant, the omnibus application may be inevitably be rendered irregular and incompetent."*

It is prayed that the preliminary objection be sustained the application be dismissed with costs.

The counsel for the applicant did not go along with the submission of the counsel for the 2<sup>nd</sup> respondent. He stated that one cannot demonstrate that



application for extension of time to revise a decision and application for revision are two separable applications. He opined that multiplicity of cases are discouraged in **Tanzania Knitwear Ltd v. Shamshu Esmil** [1989] TLR 48 where it was ruled that:

*"The combination of two applications in one is not bad in law since courts of law abhor multiplicity of proceedings."*

He cited also **MIC Tanzania Ltd v. Minister for Labour and Youth Development & AG.**, Civil Appeal No. 103 of 2004 CAT (unreported) where it was stated that:

*"There will be a multiplicity of unnecessary applications. The parties will find themselves wasting more money and time on avoidable applications which would have been conveniently combined. The Court's time will be equally wasted in dealing with such applications. Therefore, unless there is a specific law barring the combination of more than one prayer in one chamber summons, the Court should encourage this procedure rather than thwart it for fanciful reasons. We wish to emphasize, all the same, that each case must be decided on the basis of its own peculiar facts"*

The counsel for the applicant further explained that this omnibus application is competent before this Court. He added had the application for extension of time joined with application for stay of execution, that would be improper. He prayed the preliminary objection be dismissed with costs.

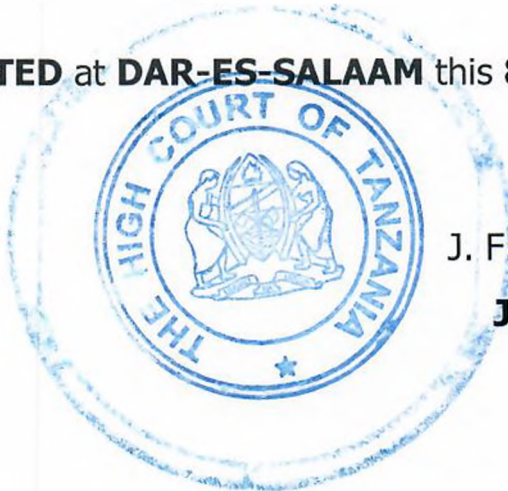
I have duly considered the rival submission of both counsel, I am not persuaded that the two applications are not related. Admittedly, the two applications are brought under different laws, but they are related. So, the decision in **Ali Chamani** (supra) is distinguishable while the decision in **MIC Tanzania Ltd** (supra) is applicable in this application. This wing of the preliminary objection has to and is, therefore, overruled for being wanting in merits.


Notwithstanding the above discussion, I think it is opportune here to point out that although the application has been brought by the applicant, the chamber summons is intended that the Court acts suo motu. That is a grave misconception and seems to be intended to mislead not only the Court but also the respondents. It is highly, discouraged.

All the above said and done, the preliminary objection is sustained on the 1<sup>st</sup> leg of the preliminary objection. The application is, thus, struck out with costs because it is incompetent before this Court.

It is so ordered.

**DATED** at **DAR-ES-SALAAM** this 8<sup>th</sup> day of May, 2023.



  
J. F. NKWABI

**JUDGE**