THE UNITED REPUBLIC OF TAZANIA

(JUDICIARY)

THE HIGH COURT – LAND DIVISION

(MUSOMA SUB REGISTRY AT MUSOMA)

Misc. CIVIL APPLICATION No. 44 OF 2021

(Arising from the High Court [Musoma Sub-Registry] in Land Appeal No. 20 of 2020, Misc. Land Application No. 24 of 2020, and Misc. Civil Application No. 54 of 2020; District Land and Housing Tribunal for Mara at Musoma in Land Appeal No. 101 of 2019; and Originated from Rigicha Ward Tribunal in Land Dispute No. 3 of 2018)

PAULO KITAIDA MANDIRA ..... **APPLICANT**

Versus

MASHAKA MASANJA MABULA ..... **RESPONDENT**

RULING

09.04.2024 & 15.04.2024

Mtulya, J.:

In the present application, **Mr. Paulo Kitaida Mandira** (the applicant) has moved this court under section 14 (1) of the **Law of Limitation Act [Cap. 89 R.E. 2019]** (the Law of Limitation) and section 47 (3) of the **Land Disputes Courts Act [Cap. 216 R.E. 2019]** (the Land Courts Act), praying for two (2) orders, *viz*: first, enlargement of time to lodge an application for certification on point of law; and second, certification on point of law in the decision of this court in **Land Appeal No. 20 of 2020** (the appeal).

The parties were summoned to appear in this court on 7th November 2023 to submit relevant materials in favor and against the application and both preferred legal representation of learned

counsels, **Mr. Emmanuel Gervas** for the applicant and **Mr. Daud Mahemba** for **Mr. Mashaka Masanja Mabula** (the respondent).

However, before hearing proceedings could take its traditional course, Mr. Mahemba raised up and complained that the applicant had registered two (2) distinct prayers regulated by two (2) distinct laws with different reasons of substantiating each move. According to him, reasons of enlargement of time are distinct from certification on a point of law and that such applications cannot be dumped in a single affidavit. In the opinion of Mr. Mahemba, the instant application is *omnibus* hence incompetent before this court and its remedy is to receive a struck-out order for want of the law regulating the subject. The move was not well received by Mr. Gervas and prayed for a leave to prepare necessary materials to reply the protest of Mr. Mahemba. The leave was granted and the application was scheduled for hearing in morning hours of 9th April 2024.

On this day, Mr. Gervas came to this court carrying two (2) decisions of this court and one (1) precedent of the Court of Appeal (the Court) to persuade this court to appreciate an argument that the combination of two (2) prayers in a single application is not bad in law. The decisions carried and cited by Mr. Gervas in this court were: **Pride Tanzania Limited v. Mwanzani Kasatu Kasamia**, Misc. Commercial Cause No. 230 of 2015; **Shida Simeo v. Samwel Bwire**,

Misc. Land Application No. 7 of 2020; and **Geita Gold Co. Limited v. Anthony Karangwa**, Civil Appeal No. 40 of 2022.

According to Mr. Gervas, the instant application contains two (2) distinct prayers regulated by different laws, but permitted in the precedent of **Pride Tanzania Limited v. Mwanzani Kasatu Kasamia** (supra), where at page 6 of the ruling, this court stated that the combination of two (2) applications is not bad in law and that there is no law that forbid the course. Mr. Gervas submitted further that the move is supported by the same court in the Ruling of **Shida Simeo v. Samwel Bwire** (supra), where at page 3 of the Ruling, the court observed that there is no law which forbid an application to contain more than one (1) prayer in chamber summons for the sake of convenience of time.

Mr. Gervas submitted further that the first prayer in the chamber summons may be disregarded as the applicant in the instant application was busy prosecuting his action in this court. According to him, the Court has already interpreted section 21 (1) of the Law of Limitation to exclude time spent by the applicant in prosecuting his action. In Mr. Gervas's opinion, the applicant was within thirty (30) days required by the law to lodge an application for certification when filing the present application. In substantiating his argument, Mr.

Gervas cited the precedent of the Court in **Geita Gold Mining Limited v. Anthony Karangwa** (supra).

Rejoining the submission, Mr. Mahemba stated that the applicant's learned counsel has admitted the fact that the present application contains *omnibus* prayers with distinct laws and that the indicated precedents are inapplicable. According to him, the precedent in **Pride Tanzania Limited v. Mwanzani Kasatu Kasamia** (supra), at page 9 of the Ruling, the court stated that prayers which are not linked or dependent must be defeated by reason of *omnibus*. Mr. Mahemba submitted further that the precedent did not resolve issues related to enlargement of time and certification on a point of law. In his opinion, even the decision in **Shida Simeo v. Samwel Bwire** (supra) does not regulate a situation where enlargement of time and certification on a point of law are prayed together, and in any case the application in the case was struck out.

Finally, Mr. Mahemba submitted that Mr. Gervas has brought in this court a very strange submission on applicability of section 21 (1) of the Law of Limitation and precedent in **Geita Gold Mining Limited v. Anthony Karangwa** (supra). According to Mr. Mahemba, the record in the instant application was already in fault since filing of the application, and not after the registration of a point of law. In his views, it is that fault which is complained in this court and anything to

rectify the fault would invite more confusions on the record, as the point of protest has already been registered and must be resolved.

I have had an opportunity to read the three (3) indicated precedents. The decision in **Pride Tanzania Limited v. Mwanzani Kasatu Kasamia** (supra) at page 6 of the ruling shows that: *the combination of two (2) applications is not bad in law* whereas at page 10, the court stated 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. Where combined prayers are apparently incompatible or discordant, the omnibus application may inevitable be rendered irregular and incompetent.*

On the other hand, the precedent in **Shida Simeo v. Samwel Bwire** (supra) shows at page 3 of the ruling, that: *an application is omnibus if contains multiplicity of prayers*. However, this court moved further to state that: *there is no law which forbids the application to have more than one (1) prayer which are related*. Reading the two (2) indicated rulings, it is obvious that *the combination of two (2) applications is not an issue*. The question is *whether the two (2) prayers are interlinked or interdependent*.

I have had an opportunity to peruse the instant prayers in the chamber summons and found that it is vivid that it contains two (2) prayer. Each prayer has its own reasons of justification and distinct laws and procedures in scrutinizing the reasons. The first prayer is related to production of good cause, which its contest may move up to the Court for the second bite whereas the second prayer traditionally ends in this court. There is a large bundle of precedents on the subject rendered down by the Court (see: **Amina Joseph Muganda v. Zainabu Juma Masoud**, Civil Application No. 357/08 of 2023; **Eustace Kubalyenda v. Venancia Daud**, Civil Appeal No. 70 of 2011; **Mathew Mlay v. Rashid Majid Kasenga**, Civil Application No.354/17 of 2020; **Shaban R. Kavitenda v. Yasin S. Kavitenda**, Civil Application No.252/01 of 2020; and **Sogoka Raphael v. Florentina Raphael**, Civil Application No. 336/08 of 2023).

Again, I have scanned the prayers in the present application and the two (2) indicated precedents in **Pride Tanzania Limited v. Mwanzani Kasatu Kasamia** (supra) and **Shida Simeo v. Samwel Bwire** (supra) and noted they are distinct. The dual precedents do not regulate two (2) distinct prayers of enlargement of time to lodge an application for certification on point of law and application for certification on point of law. The dual decisions cannot apply in the present contest.

I have searched for a precedent of similar dispute in our record unsuccessfully. However, the move of leave to appeal to the Court from this court is similar to the move of certification on a point of law. The only existed distinction was that leave was prayed when a dispute originated from district courts or tribunals whereas certification for a point of law is reserved for cases originating from primary courts or ward tribunals (see: section 5 of the **Appellate Jurisdiction Act [Cap. 141 R.E. 2019]** (the Appellate Act); Item (c) of Part III of the **Magistrates' Courts Act [Cap. 11 R.E. 2019]** (the Magistrates' Court Act); and section 47 of the **Land Disputes Courts Act [Cap. 216 R.E. 2019]** (the Land Disputes Act).

Before amendment of section 5 of the Appellate Act and section 47 of the Land Disputes Act to remove want of leave to access the Court, this court had resolved the issue of enlargement of time to file an application for leave and application for leave in an *omnibus* application (see: **Geofrey Shoo & Another v. Mohamed Said Kitumbi & Two Others**, Misc. Land Application No. 109 of 2020). This court, then thought, at page 5 of the Ruling, that:

> *There is an application for extension of time which aims at allowing the applicants to pursue their intended course out of time. The intended course in this case is application for leave to appeal to the Court of Appeal.*

The application for extension of time should have come first and separate from the intended course. This is because the extension of time is the one, if granted, gives the applicants green light for further actions...the purpose is simple, that is to help the court and parties to have focus on specific issues that need to be determined.

In substantiating its Ruling, this court had moved further to cite previous decision of its own and the support of the Court in: **Khalid Simba v. L.H. Maleko**, Land Revision No. 23 of 2019 and **Mohamed Salimin v. Jumanne Omary Mapesa**, Civil Application No. 103 of 2014. This court has practice of following its previous decisions, unless there are good reasons to justify departure of the practice. Similarly, this court abides with precedents of the Court, without any reservations. It will do so in this ruling.

I am aware the dual learned counsels are not disputing the application of section 21 (1) of the Law of Limitation Act and precedent of **Geita Gold Mining Limited v. Anthony Karangwa** (supra). Their contest is when does the cited law and precedent applicable. According to Mr. Gervas, the law is applicable at any moment the applicant becomes aware on the existence of the law, whereas Mr. Mahemba thinks that the indicated section and precedent cannot be invited in a fault record. In his opinion, since the time of

filing the present application, the record was at fault and cannot be rescued after a point of objection has already been raised and registered on the record.

I am aware of the established principle of law that that once a point of law has been registered, it cannot be circumvented (see: **Meet Singh Bhachu v. Gurmit Singh Bhachu,** Civil Application No. 144/2 of 2018). What is attempted by Mr. Gervas is to sidestep the registered point of law, which has been, in often times, discouraged by this court. It could have been different, if Mr. Gervas had prayed for amendment of the application before the point was introduced by Mr. Mahemba. That would have been at the discretion of the court to grant or refuse leave for amendment of the application. In the present circumstances, this court has no such powers than to resolve a point of law raised by Mr. Mahemba.

I have already indicated that the instant application has combined two (2) distinct prayers and the Court has previously held, for times without number, that combining two or more unrelated prayers in a single application renders the application incompetent and liable for struck out (see: **Mohamed Salimin v. Jumanne Omary Mapesa** (supra).

In the end, and for the foregoing reasons, I sustain the point raised by Mr. Mahemba and hereby strike out the application for want

of the law regulating *omnibus* applications. I do so without costs as the application was brought in good faith intending to access the Court to contest the decision of this court in the appeal.

It is so ordered.

Right of appeal explained to the parties.

F.H. Mtulya

Judge

15.04.2024

This Ruling was delivered in Chambers under the Seal of this court in the presence of the applicant's learned counsel, **Mr. Emmanuel Gervas** and in the absence of the respondent.

F.H. Mtulya

Judge

15.04.2024