

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(ARUSHA SUB-REGISTRY)**  
**AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 106 OF 2023**

*(C/f The High Court of the United Republic of Tanzania, Misc. Civil Causes No. 18 of 2023, 21 of 2022  
and 178 of 2022)*

**LATANG'AMWAKI NDAWATI ..... 1<sup>ST</sup> APPLICANT**  
**EZEKIEL SUMARE KUMARI ..... 2<sup>ND</sup> APPLICANT**  
**KILEO MBIRIKA ..... 3<sup>RD</sup> APPLICANT**  
**NAMURU KITUPEI ..... 4<sup>TH</sup> APPLICANT**  
**PHILEMON NGURUMAI ..... 5<sup>TH</sup> APPLICANT**  
**NOKOREN TAOYIA ..... 6<sup>TH</sup> APPLICANT**  
**METIAN TIKWA SEPENA ..... 7<sup>TH</sup> APPLICANT**  
**SAITOTI PARMWAT ..... 8<sup>TH</sup> APPLICANT**

**Versus**

**RAYMOND MANGWALA ..... 1<sup>ST</sup> RESPONDENT**  
**PIUS ONESMO RWIZA ..... 2<sup>ND</sup> RESPONDENT**  
**DAVID MKENGA ..... 3<sup>RD</sup> RESPONDENT**  
**ROBERT LAIZER ..... 4<sup>TH</sup> RESPONDENT**  
**PRISCA ULOMI ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

22<sup>nd</sup> January & 8<sup>th</sup> April 2024

**MWASEBA, J.**

In this application, by chamber summons supported with affidavits, the applicants under **Sections 95, 68(e), Order XXXVII**



**Rule 2(2) of the Civil Procedure Code, Cap. 33 [R.E 2019]** (hereinafter "the CPC"), **Sections 114(1) (d) and 124 of the Penal Code, Cap. 16 [R.E 2022]** (hereinafter "Cap. 16") and **Section 2(1) of the Judicature and Application of Laws Act, Cap. 358 [R.E 2019]** are seeking the following orders:

- a) That this Honourable Court be pleased to cite, hold Raymond Mangwala, Pius Onesmo Rwiza, David Mkenga, Robert Laizer and Prisca J. Ulomi to be guilty of court contempt of the court order in Misc. Civil Cause No. 178 of 2022 of the High Court of Tanzania Arusha sub-registry;*
- b) That, the Honourable Court be pleased to order the livestock illegally seized, held and continue to be detained by the persons named under item (i) to be brought in court and handed over to its lawful owners;*
- c) An injunction order to restrain the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>d</sup> and 4<sup>th</sup> Respondents from maliciously seizing livestock, beating or harassing person(s) lawfully accessing the land subject to Misc. Civil Cause No. 18 of 2023 pursuant to the High Court in Misc. Civil Cause No. 178 of 2022 that stayed operation of G.N No. 604 of 2022 and Misc. Civil Cause No. 21 of 2022 that nullified G.N No. 421 of 2022;*
- d) An order that the persons mentioned under item (i) are liable in their personal and individual capacities for contempt of Court and are subject to orders made by the competent established Court within the United Republic of Tanzania in Misc. Civil Cause No. 178 of 2022 and Misc. Civil Cause No. 21 of 2022;*



- e) As this matter has been brought for public interest and upholding and protecting authority of Court in dispensing justice, an order that each party bears its own costs of this suit; and*
- f) Any other order or relief that this court deems just to grant.*

The application is supported by affidavits of Ezekiel Sumare Kumari (the 2<sup>nd</sup> applicant), Barnoti Kukutia Ormekuri, Nekaya Olembiroi Mutangung, Kisoombe Ngatuny Mollel, Mures Mbowe, Mures Lesalon, Joel Clemence Resson, Kidemi Saruni Sharbab and Sikoyo Loshuro. The respondents contested the application in a counter affidavit deposed by Mr. Kapimpiti Mgalula, a learned advocate for the respondents.

Before delving into what was argued by counsel for the parties, I find myself unable to do without narrating, albeit briefly, the factual materials underpinning the background of the application. On 17/06/2022, the Minister for Natural Resources and Tourism, vide Government Notice No. 421 of 2022, signed the order to declare and establish Wildlife Conservation (Pololeti Game Controlled Area) (Declaration) Order, 2022 within Loliondo and Sale wards. The said controlled area covered land measuring 1502 acres from 14 villages which the applicants claim to be their village land. The applicants were aggrieved by the declaration on the account that it did not comply with the laws.





The applicants sought and were granted leave to challenge the declaration and establishment of Pololeti Game controlled Area) (Declaration) Order, 2022 through the prerogative orders of certiorari and prohibition. After being granted leave, they challenged the order of the Minister vide Misc. Civil Cause No. 21 of 2022, through the writs of mandamus and prohibition as above pointed. After a thorough hearing of the application, this court (Tiganga, J.), in the ruling handed down on 19/09/2023, found that the declaration was made without consulting the indigenous of the area. However, in the pendency of the case, on 14/10/2022, the President of the United Republic of Tanzania, vide Government Notice No. 604 of 2022, upgraded Pololeti Game Controlled Area to Pori la Akiba Pololeti of 2022 (Pololeti Game Reserve Declaration Order) G.N No. 604 of 2022. Having been upgraded to a Game Reserve, the learned Judge observed that the order of the Minister was impliedly repealed by the order of the President. Owing to the fact that the Minister cannot invalidate the order of the President, the learned Judge gave advice that if any party was still interested, he was at liberty to challenge the existing order of the President.

The applicants through Misc. Civil Cause No. 178 of 2022 sought and were granted leave to challenge the order of the President establishing Pori la Akiba Pololeti of 2022 (Pololeti Game Reserve





Declaration Order) G.N No. 604 of 2022 through the writs of *mandamus*, *certiorari* and *prohibition*. This court (Kamuzora, J.), in its ruling delivered on 22/08/2023, granted the applicants leave to challenge G.N No. 604 of 2022 through *certiorari*, *mandamus* and *prohibition*. The court further ordered a stay of operations of Pori la Akiba Pololeti of 2022 (Pololeti Game Reserve Declaration Order) G.N No. 604 of 2022 until final determination of the main application. The applicants preferred Misc. Civil Cause No. 18 of 2023, aiming at challenging the order of the President establishing Pori la Akiba Pololeti of 2022 (Pololeti Game Reserve Declaration Order) G.N No. 604 of 2022, which is still pending.

During the pendency of the matter, on diverse dates between 25/09/2023 and 09/10/2023, the respondents, accompanied by military officials, invaded the defunct Pololeti Game Reserve, harassed the indigenous and seized herds of livestock belonging to the villagers. The applicants have preferred this application believing that Pololeti Game Reserve was rendered inoperative after being stayed vide Misc. Civil Cause No. 178 of 2022, therefore, the acts of the respondents harassing and seizing livestock of those who continued to graze in the area amounts to contempt of court, hence this application.



On 06/12/2023, by notice, counsel for the respondents raised two preliminary objections articulated in the following terms:

- a) *That the Application is bad and unmaintainable in law for being omnibus; and*
- b) *That the Application is bad in law for containing defective Affidavits.*

As a practice of the court militates, where a notice of preliminary objection is raised in an appeal or application, the court is behoved to determine the preliminary objection first before allowing the appeal or application to be heard on merit. In tandem with that practice, I ordered the preliminary objections to be heard first.

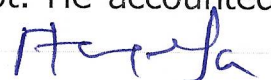
At the hearing of the preliminary points of objection, the applicants were represented by a team of advocates, led by Mr. Joseph Moses Oleshangay, learned advocate. Others included Jebra Kambole, Jeremiah Mtobesya, Yonas Mesiaya and Denis Moses; all learned advocates. The respondents had legal services from Mr. Kapimpiti Mgalula, learned advocate. The hearing of the preliminary objection was through filing written submissions.

Submitting in support of the first limb of the preliminary objection, Mr. Mgalula contended that the application is omnibus for having combined more than one relief. He asserted that the applicants prayed that the respondents be found guilty of contempt of court in Misc. Civil



Cause No. 178 of 2022, and at the same time, they prayed that the respondents be held liable in their personal and individual capacities for contempt of court subject to orders made by the competent established court within the United Republic of Tanzania in Misc. Civil Cause No. 178 of 2022 and Misc. Civil Cause No. 21 of 2022. Similarly, the applicants prayed for an injunction order to restrain the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> respondents from maliciously seizing livestock, beating or harassing persons lawfully accessing the land subject to Misc. Civil Cause No. 18 of 2023. According to the respondent's counsel, the applicants have made the above prayers in the combine against three distinct Misc. Applications, which he referred to as Misc. Civil Causes No. 178 of 2022, 18 of 2023 and 21 of 2022. In his view, the combination rendered the application omnibus. To fortify his argument, he referred to the following cases: **Siri Nassir Hussein Sir v. Rashid Musa Mchomba (Acting as administrator of the estate of the deceased Musa Mchomba Massawe)**, Civil Application No. 23 of 2014 and **Ali Chamani v. Karagwe District Council and Columbus Paul**, Civil Application No. 411/4 of 2017 (unreported).

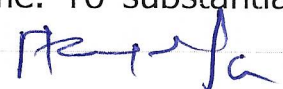
In respect of the 2<sup>nd</sup> limb, Mr. Mgalula contended that the application is bad for contravening **Order VI Rule 15(1) of the CPC**, which requires every pleading to be verified at the foot. He accounted





that the affidavits in support of the application fall short because they were not verified by either of the eight applicants, but rather they were verified by some other individuals who did not plead or appear as applicants in the application, rendering the affidavits defective. Based on the two preliminary points of objections, Mr. Mgalula urged the court to find merits in the preliminary objections and dismiss the application with costs.

Resisting the first limb of the preliminary objection, counsel for the applicants prefaced their submission by posing a question; whether there is any law which restricts the combination of more than one prayer in one application so long as they are interrelated and they fall within one subject matter. To back up their proposition, they referred to the decision of this court in **First Assurance Co. Ltd v. Aron Kaseke Mwasonzwe and Zhi Yuan International Group C. Ltd**, Civil Revision No. 1 of 2020 H.C Mbeya Sub-registry. The learned counsel for the applicants submitted that the motive behind joining more than one prayer in one application is to minimize congestion and avoid unnecessary backlogs in applications which could have been determined together. Further, lumping together interrelated applications aims at watering down the costs of the filing and instruction fees to the advocates as well as saving the court's precious time. To substantiate



their argument, the learned counsel for the applicants referred the Court of Appeal decision in **MIC Tanzania Limited v. Minister for Labour and Youth Development & Attorney General**, Civil Appeal No. 103 of 2004 (unreported).

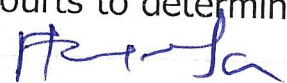
Reverting to the application at hand, the applicants' advocates insisted that the prayers in the chamber summons are related, interrelated and interlinked as they all revolve around holding the respondents liable for contempt of court. It was their further view that if the court finds the respondents liable for contempt of court, it will proceed with the order in item (iii) to restrain them from continuing with their acts. The court will also proceed with the order in item (iv) by punishing them for contempt of court.

Responding to the 2<sup>nd</sup> limb of the preliminary objection, counsel for the applicants submitted that among those who verified the affidavits in this application was the 2<sup>nd</sup> applicant, Ezekiel Sumare Kumari, contrary to contention by the respondents' counsel that the affidavits were verified by nine persons who are strange to the application. They added that the 2<sup>nd</sup> applicant deposed from whom he received the information at the verification clause, insisting that the law requires the deponent to verify the affidavit on the facts known to himself. To buttress their submission, they referred to the ancient case of **Uganda**

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**v. Commissioner of Prisons, Ex-Parte Matovu** [1966] E. A 514 at 520.

The learned advocates for the applicants added that the 2<sup>nd</sup> applicant mentioned in his affidavit people who were beaten and their livestock confiscated by the respondents. He also deponed on those who attended the meeting convened by the 1<sup>st</sup> respondent in his affidavit. All those who deponed the affidavits are those whose livestock were seized by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents and are in danger of being confiscated and auctioned. Other deponents included those who attended the meeting convened by the 1<sup>st</sup> respondent. Without having affidavits of those mentioned by the 2<sup>nd</sup> applicant in his affidavit, it would render his affidavit hearsay, counsel for the applicants asserted. To buttress their submission, they relied on the following Court of Appeal decisions: **Benedict Kimwaga v. Principal Secretary, Ministry of Health**, Civil Application No. 31/2000 and **Sabena Technics Dar Limited v. Michael J. Luwunzu**, Civil Application No. 451/18 of 2020 (both unreported). They maintained that the affidavits of the eight deponents who are not applicants herein were paramount and relevant since they were mentioned by the 2<sup>nd</sup> applicant in his affidavit. Counsel for the applicants further urged the court to rely on **Sections 3A and 3B of the CPC**, which calls upon courts to determine



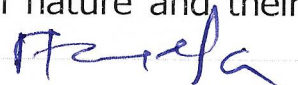


cases expeditiously without being thwarted by technicalities. They prayed that the preliminary objections be overruled with costs.

Rejoining, Mr. Mgalula reiterated what he submitted in the submission in chief with minimal additions. He added that despite the fact that there are no specific laws restricting omnibus applications, they are subject to case laws, which are also part of lawmaking. He insisted that the application is omnibus since it combined civil prayers enforceable under the CPC and criminal prayers enforceable under **Sections 114(1)(d) and 124 Cap. 16**, and above all, they emanate from distinct applications.


I have dispassionately considered the submissions by the counsel for both sides and I have examined the application as well as the reliefs sought by the applicants. The issue to be resolved is whether the preliminary objections have merits.

At the outset, I fully subscribe to the proposition taken by Mr. Mgalula that the application is not properly before the court because it is omnibus. The reason is not far-fetched as the applicants are seeking distinct reliefs, as paraphrased at the beginning of the ruling. Undoubtedly, the prayers sought in the chamber summons in items (i) and (iv), in which the applicants are seeking the court to hold the respondents liable for court contempt, are criminal in nature and their



enforceability is through criminal proceedings. The orders sought in item (iii), which seeks an injunction order to restrain the respondents from seizing the livestock, beating and harassing the persons accessing the land, are purely civil in nature and can be accessible through civil application. The order sought in item (ii) can be attained in either civil or criminal proceedings.

It is trite law that in civil proceedings, the power of the court to hold and commit the non-party to criminal prison for contempt of court is twofold. **First**, when the contempt is committed in the face of the court, the court has the power to deal with the issue summarily. However, in such circumstances, the accused must be afforded an opportunity to show cause why he should not be committed to prison for contempt after a formal charge is drawn. **Second** is where a person not a party to the suit disobeys a lawful order of the court. In such a situation, the person in default has to be formally charged under **Section 124 of Cap. 16**. The Court of Appeal has recently clarified the procedure of committing a person who is non-party to criminal prison for contempt of court in the case of **Yusuph Shaban Luhumba v. Hapyness John & Others** (Civil Application 304 of 2022) [2022] TZCA 396 (27 June 2022), where it was held:



*"As we understand the law, the trial court can, in civil proceedings, commit a non-party to criminal prison for contempt of court in two situations. One, when the contempt is committed in the face of the court. As we said above, in such a situation, the court has power to deal with the issue summarily. However, in doing so, the trial Judge is obliged, as a way of affording the accused a right to be heard, to frame the charge, read it over to the accused and give him an opportunity to show cause why he should not be committed as such. (See for instance, **Masumbuko Rashidi v. R** [1986] TLR, 212). **Two, is where a person not a party to the suit, disobeys a lawful order of the Court. In such a situation, the person in default has to be formally charged under section 124 of the Penal Code [Cap. 16 R.E. 2019].**"(Emphasis added)*

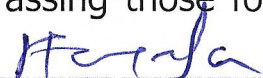
Therefore, the procedure of holding liable a non-party to a case for contempt of court is through criminal proceedings, by charging the party under **Section 124 of Cap. 16**. When faced with akin situation on whether the procedure applicable is through **Order XXXVII Rule 2(2) of the CPC** or **Section 124 of Cap. 16**, once a person not party to civil case is sought to be held criminally liable for contempt of court, the Court of Appeal in **Habiba Juma & Others v. Republic** (Criminal Appeal 134 of 2016) [2017] TZCA 172 (9 August 2017), cemented the position in the following terms:





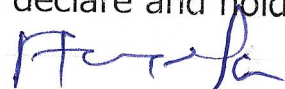
*"In the premises, we fully agree with the learned State Attorney that as the **appellants were not parties in a matter before the District Land and Housing Tribunal, Babati the proper provision to be invoked to charge them was section 124 of the Penal Code and not Order XXXVII, rule 2(2) of the CPC.** Contrary to what have been submitted by Mr. Rumende, regardless of being a Civil matter before the trial Tribunal, **as the appellants were not parties in the trial Tribunal hence Order XXXVII, of the CPC cannot apply to charge the appellants for such disobedient of a lawful order.** We just like the learned State Attorney distinguish the case of Kigorogolo (supra) with this case because in that case the respondent was a party, whereas in this case the appellants were not parties in Application No. 85 of 2014 before the District Land and Housing Tribunal, at Babati."* (Emphasis added)

In the application at hand, the 2<sup>nd</sup> applicant deponed under paragraphs 2 and 8 of his affidavit that he is among the applicants in Misc. Civil Causes No. 178 of 2022, 21 of 2022 and 18 of 2023. Further, Misc. Civil Causes No. 178 of 2022, 21 of 2022 and 18 of 2023 show apparently that the respondents herein are/were not parties to those cases. Under paragraphs 8 to 24 of the affidavit by the 2<sup>nd</sup> applicant in support of the application, he deponed that the respondents disobeyed the orders of this court by seizing livestock and harassing those found



accessing the land subject to the defunct Pololeti Game Reserve while the Government Notice No. 604 establishing the same was stayed by this court in Misc. Civil cause No. 178 of 2022, until determination of Misc. Civil Cause No. 18 of 2023, which is pending in this court. Further, Government Notice No. 421, which established the defunct Pololeti Game Controlled Area, was declared illegal by this court vide Misc. Civil Cause No. 21 of 2021. From the above set of facts, it is apparent that the contempt alleged to have been committed by the respondents herein was committed outside the court by persons who were not parties to Misc. Civil Causes No. 178 of 2022, 21 of 2022 and 18 of 2018. Thus, the procedure adopted by the applicants seeking to hold the respondents liable for court contempt is, without prejudice, a wrong path.

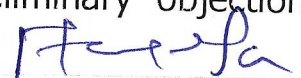
As pointed out earlier, the applicants also seek an injunctive order to restrain 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents from maliciously seizing livestock, beating or harassing person(s) lawfully accessing the land subject to Misc. Civil Cause No. 18 of 2023 pursuant to High court orders in Misc. Civil Cause No. 178 of 2022 which stayed operation of G.N No. 604 of 2022 and Misc. Civil Cause No. 21, which impliedly repealed G.N No. 421 of 2022. Such orders are civil in nature, and they are grantable under **Section 68(e) of the CPC**. While the orders to declare and hold



the respondents liable for contempt of court are criminal in nature and enforceable under **Section 124 of Cap. 16**. Thus, the two reliefs cannot be lumped into one application due to the nature of their enforcement mechanisms. Legally speaking and in practice, reliefs enforceable in criminal proceedings cannot be featured in those enforceable through civil litigation. Since the prayers sought in the chamber summons are exclusively enforceable through criminal and civil mechanisms, they ought to be filed in separate forums. Without mincing words, contempt of court order ought to be channelled through criminal court, while injunction could be enforced in civil matters. Since the reliefs sought ought to be applied differently, I associate myself with the holding in **Juma M. Nkondo v. Tol Gases Limited/ Tanzania Oxygen Limited & Another**, (Civil Application 382 of 2019) [2021] TZCA 372 (12 August 2021), where it was held:

*"To say the least, none of the provisions which were invoked by the applicant provides room for any party to file two applications in one, as happened here. In view of the above, therefore, the applicant was, as a matter of law, required to file the two applications separately."*

On the strength of the deliberations and authorities above, I am inclined to agree with Mr. Mgalula that the application is misconceived for being omnibus. I find the 1<sup>st</sup> limb of the preliminary objection





merited and sustain it. Having found that the application is misconceived in the first preliminary objection, it sufficiently disposes of the application since delving into the second limb will not serve any purpose, having ruled that the application is incompetent.

In view of the aforesaid, I am inclined to sustain the first preliminary objection and strike out the application. However, in the chamber summons, the applicants prayed that they be exempted from paying costs since the matter has public interest and is aimed at protecting the authority of the court in dispensing justice; therefore, each party bears its own costs. I agree with the counsel for the applicants that the matter at hand has a public interest, and thus, each party should bear its costs.

Order accordingly,

**DATED** at **ARUSHA** this 8<sup>th</sup> April 2024



  
**N. R. MWASEBA**

**JUDGE**