

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. CIVIL CASE NO.100 OF 2003

TAFICO MWANZA (1998) CO. LTD. APPLICANT

VERSUS

**PRESIDENTIAL PARASTATAL
SECTOR REFORM COMMISSION RESPONDENT**

RULING

SHANGWA, J.

This is an application for leave to institute legal proceedings against the respondent **PRESIDENTIAL PARASTATAL SECTOR REFORM COMMISSION.**

Essentially, it has been made in accordance with O.XLIII, R.2 of the Civil Procedure Code, 1966. Thus, it has been supported by affidavit of **Frank Marealle.** It has also been made under S.39(1) of the Public Corporations Act, 1992 as amended, and S.9(1) of the Bankruptcy Ordinance (Cap.25).

If I may comment a little bit on the last two sections under which this application has been made starting with S.39(1) of the Public Corporations Act, 1992, I find that this section does not provide for the necessity of the leave of the Court before a suit can be instituted against PSRC. This section deals with something else and I need not mention it here. I also find that S.9(1) of the Bankruptcy Ordinance is not relevant here. Under this section, leave of the Court before instituting legal proceedings is required in cases of petitions in bankruptcy. In this case, **TAFICO MWANZA (1998) CO. LTD.** is not intending to lodge a bankruptcy petition against **PSRC** as **PSRC** is not its debtor. **PSRC** is simply an official receiver of certain assets of **TAFICO** which is under its receivership. The relationship between **TAFICO MWANZA (1998) CO. LIMITED** and **PSRC** is that of Buyer and Seller of **TAFICO'S** assets respectively which relationship is governed by their Memorandum of Understanding.

What **TAFICO MWANZA (1998) CO. LTD.** is intending to do is to lodge a claim against **PSRC** for damages in respect of loss of business for non-performance on its part of certain obligations contained in their Memorandum of Understanding.

This application was presented by Mr. Maira, Advocate. Mr. Fungamtama who appeared on behalf of the respondent **PSRC** did not object to this application. In fact, he had filed a preliminary objection which he also withdrew.

On my part, notwithstanding my comments above, I do not have any reason to refuse this application for leave to institute legal proceedings against the respondent which I hereby grant. Each Party to bear his own costs. It is so decided.



A. SHANGWA

JUDGE

29/5/2003

Delivered in Court in the presence of Mr. Kiwanga, Advocate holding brief for Mr. Maira, Advocate for the Applicant and Mr. Fungamtama, Advocate for the Respondent this 29th day of May, 2003.



A. SHANGWA

JUDGE

29/5/2003