

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CIVIL CASE NO. 181 OF 2004

**ALLIANCE INSURANCE CORPORATION
& ANOTHERPLAINTIFFS**

VERSUS

**1. NICDEFENDANTS
2. GULAMABUS A. SHABIR
3. PSRC**

R U L I N G

A.Shangwa,J.

Both the 1st and 3rd defendants in this case have raised some points of preliminary objection against the plaintiffs' suit and asked this Court to dismiss it with costs.

The 1st defendant raised three points of preliminary objection. First, that the plaintiffs have no direct right of

action in law to sue it under the principle of subrogation. Second, that no notice of assignment was given to it by the plaintiffs before instituting the suit against it. Third, that the suit is premature and that it was filed in total disregard of the provisions of Companies (winding - up) Rules, 1929.

The 3rd defendant raised one point of preliminary objection namely that the plaintiffs have no cause of action against the defendants .

I have gone through the lengthy written submissions filed by learned counsel for the 1st defendant MS Msemwa and Co; Advocates and found that their first and second points of preliminary objection to the suit are in substance pre-emptive .

In my opinion, the question as to whether or not the 1st plaintiff has a right to sue the 1st defendant in its own name under the principle of subrogation and the question as to whether or not a notice of assignment was given by the 1st plaintiff to the 1st defendant before instituting this suit are matters to be considered by the Court after hearing the evidence from both sides. This suit cannot therefore be dismissed at this stage under the principle of subrogation or on ground that a notice of assignment was not given by the 1st plaintiff to the 1st defendant before instituting it.

In my view, the third point in which learned counsel for the 1st defendant are saying that the suit is premature on ground that no affidavit to the liquidator or official receiver was taken by the plaintiffs to prove their claims before instituting it has no merit. It has no merit for two reasons: First, the plaintiffs' claims do not involve a debt which is

where in the plaint is it shown that the 3rd defendant is liable whether in contract, indemnity or otherwise.

First of all, I wish to state that the plaint does disclose a cause of action. See for example paragraphs 7 and 8 of the plaint in which it is claimed that on 30/12/2002 the 2nd plaintiff's passenger bus with Reg. No. TZQ 9445 collided with a Scania oil tanker and Trailer with Reg. Nos MSK 95 and TZ 80781, at Kifaru bridge in Mwanga District , Kilimanjaro Region as a result of reckless driving of the 2nd defendant's driver who was driving the said tanker which caused extensive damage to the bus and loss of lives; and that at the time of the accident, the second defendant's tanker and trailer was comprehensively insured by the 1st defendant under policy number 27CCD 11161.

Secondly, I wish to state that the 3rd defendant was joined in the suit for relief purposes. The Management of the 3rd defendant knows very well that the 1st defendant is a Specified Public Corporation which is under its official receivership and that in case the 1st defendant is found liable and fails to discharge its liability, the 1st plaintiff will be bound to seek relief from them.

As I have already mentioned, the plaint does disclose a cause of action. As the 1st plaintiff is expecting to get relief from the 3rd defendant in case the 1st defendant is found liable, there is no way the 3rd defendant can avoid being joined in this case. For this reason, I also dismiss the 3rd defendant's preliminary objection. Costs to be in the main cause.


A. Shangwa, J.

8/12/2005

Delivered in open Court this 8th day of December, 2005.



A. Shangwa

JUDGE

8/12/2005