

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

**MISC LAND APPLICATION NO 30 OF 2020
(Arising from Land Case No. 1 of 2018)**

**MASHIRI MAGESA1ST APPLICANT
YAHAYA MSANGI.....2ND APPPLICANT
CLEMENT MKUSA.....3RD APPLICANT
DAVID RADSLAUS.....4TH APPLICANTY**

VERSUS

RICHARD MAJENGA.....RESPONDENT

RULING

8th & 12/3/2021

MKWIZU, J

This is a ruling in respect of an application for leave to file a Third party notice in Land case No 1 of 2018 in which the Applicants are the defendants. In that case, plaintiff (now respondent) lodged a claim against the applicants for *inter alia* Tanzanian Shillings Three Hundred and twenty Million (Tshs. 320,000,000/=), general damages, Courts interest at 12%, declaration that the act of the applicants of trespassing the premises was unlawful/unjustifiable and costs of the

suit, following demolishing of the house Plot No. 398 Block "O" located at Nyasubi Ward within Kahama Town.

Before the hearing of the suit, on 26th June, 2020, under the provisions of **Order 1 Rule 14 of the Civil Procedure Code Cap 33 R: E 2019**, applicants filed this application for leave to file a third party Notice to Kahama Municipal council. The application is supported by an affidavit sworn by Mr. Rogasian Raphael applicants' advocate.

When the application came for hearing, Mr. Rogasian Raphael learned Advocate appeared for the applicants and the Respondent was unrepresented.

Supporting his application, Mr. Rogasion submitted that they had filed an application for leave to file Third Party Notice to Kahama Municipal Council, Applicants employer. The learned council contended that Applicants are employees of Kahama Municipal Council under whose instructions the Respondent house, subject of the claim in Land case No 1 of 2018 was demolished by the Applicants. He elaborated that applicant are entitled to

indemnification from the third party in case the plaintiff succeed in the main case. Respondent supported the application.

Having heard the parties and gone through the chamber summons and the supporting affidavit, I find the issue for determination to be whether Kahama Municipal Council is a necessary party to be joined as a Third Part in the suit between the Respondent and the Applicants in Land case No. 01 of 2018.

The applicant have established that Kahama Town Council (Now municipal council), as their employer, instructed them to enter and supervise the demolishing the Respondent's house located in Plot No. 398 Block "O" at Nyasubi Ward within Kahama Town, the act which has resulted into a claim against them in Land case no 1 of 2018. Underscoring the point, Applicant's counsel as employees of the Kahama Town Council, which is now Municipal Council were bound to act upon the employer's instructions. This is the averment in paragraph 3, 4 and 5 of the supporting affidavit.

Third Party Procedure is regulated by Order 1 rule 14 of the Civil Procedure Code Act Cap 33 R.E 2019 which provides that;

Where in any suit a defendant claims against any person not party to the suit (herein after referred to as third party)

a) Any contribution on indemnity or

b) Any relief or remedy relating to or connected with subject matter of the suit and substantially the same as a relief or by the plaintiff; the defendant may apply to the court for leave to present to the court a third-party notice. "

Gleaned from the cited provision above is that, the liability of a third party in a suit is limited to his /her contribution and/or indemnity upon the defendant being found liable to the plaintiff. The police behind this rule was clearly stated in the case of **Hasnair M. Murji v Abdulrahim A. Salum t/a Abdulrahim Enterprises**, Civil Appeal.No.6 of 2012 (Unreported) where it was held that:

"The Policy behind this rule is that, the defendant, who has got a claim against a third party need not be driven to a fresh suit against the third party to put the indemnity in his favour into operation or to establish his entitlement to contribution from the third party. The claim and right interest of the defendant and the third party have to be decided in the third-party proceedings. "

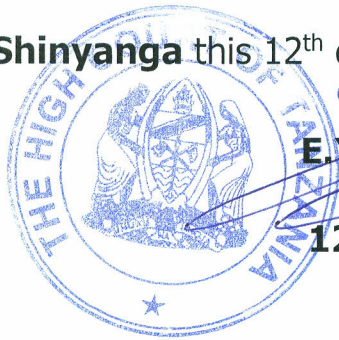
Thus, in an application of this nature, applicants must satisfy the court that they are entitled to contribution or indemnity from the third party, in respect of the amount which the plaintiff in the main case claims from them in the event that the claim is successful.


I have given this matter a thorough scrutiny. Indeed, the applicants were and are still the intended third-party's employees. The affidavit is to the effect that, the demolition of the respondent's property was done by the applicants under the intended third party's instruction. The reality is, had it not been for the employer – employee's relationship between the applicants' and the intended Third Party, Applicants would not have fallen into the Plaintiffs hands. In the English case of **Wyne v Tempest** [1897] 1 Ch. 110, at 113, it was stated that:

"A right to indemnity may arise under express or implied contract or [in equity] by reason of an obligation from the relation of the parties,..."

The application is therefore justified. Applicants have sufficiently demonstrated their entitlement against the third party, in case the plaintiff's claim is successful. I for that reason allow the application. The Third-Party Notice be issued and served to the Third Party –Kahama Municipal Council within **seven (7)** days from the date of this ruling. No order as to costs. Order accordingly.

DATED at **Shinyanga** this 12th day of **March**, 2021.




E.Y. MKWIZU
JUDGE
12/03/2021