

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

MISCELLANEOUS CIVIL APPLICATION NO. 45 OF 2021

(Originating from Civil Case No. 183 of 2018 between Koru Freight Limited and Peter Lucas Assenga v. Commercial Bank of Africa (T) Limited and Bani Investment Limited)

NCBA BANK TANZANIA LIMITED ----- 1ST APPLICANT

COMMERCIAL BANK OF AFRICA

(TANZANIA) LIMITED ----- 2ND APPLICANT

VERSUS

KORU FREIGHT LIMITED ----- 1ST RESPONDENT

PETER LUCAS ASSENGA ----- 2ND RESPONDENT

BANI INVESTMENT LIMITED ----- 3RD RESPONDENT

Date of last Order: 27/10/2021

Date of Ruling: 12/11/2021

R U L I N G

MGONYA, J.

Before the Court is an Application brought under **Order XXII, Rule 10 (1) of the Civil Procedure Code, Cap. 33 [R. E. 2019]**.

The same is for this Court to grant an Order/Leave to the Applicant that **Civil Case No. 183 of 2018** pending this Honourable Court be continued by the 1st Applicant in place of 2nd Applicant herein.

The gist of the Application before the Court can easily be traced in the Applicants' Affidavit duly sworn by **LILIAN MNDEME**, the Senior Legal Officer working with the 1st Applicant herein, particularly in **paragraphs 3 to 8** of the same. The Application has been encountered by the Respondents through their respective Counter – Affidavit and reply to the Written Submission of the Applicants.

Briefly, the Respondents' concern is clearly seen in **paragraph 5** of their Counter Affidavit stating their concern that, the cause of action arose with the 2nd Applicant and all the Agreement were entered with the same. Thus, substituting the party means changing the cause of action and that will change the case. Furthermore, the 1st Applicant is said to have failed to attach the certificate of incorporation from **BRELA**.

In the cause of determining the instant Application, I had an opportunity of going through both parties' pleadings and written submissions for and against the Application.

As the fact, both Applicants herein are regulated by the **Bank of Tanzania** as the latter is the Supervisor to all Banks and Financial Institutions in the country.

In the cause of going through the documents attached to the Applicants' Affidavit duly sworn by **Ms. Mndeme**, I came across the Bank of Tanzania Letter dated **14th February**,

2020 with Reference No. FA/349/03/26 to the Chief Executive Officer Bank of Africa (T) Ltd attached as **ANNEXTURE NCBA 2** where the title of the same is:

"RE: MERGER BETWEEN NIC GROUP PLC AND COMMERCIAL BANK OF AFRICA LIMITED (now NCBA GROUP PLC)

APPLICATION TO TRANSFER, VOLUNTARILY MERGE AND CONSOLIDATE THE BANKING BUSINESS OF COMMERCIAL BANK OF AFRICA (TANZANIA) LIMITED AND NIC BANK (TANZANIA) LIMITED IN ACCORDANCE WITH SECTION 30 (1) (A) OF THE BANKING AND FINANCIAL INSTITUTIONS ACT, 2006.

*I refer to your letter number **CATAPULT/MERGER/2019/09/26** dated 30th October, 2019 regarding the captioned subject.*

I am pleased to inform you that, subject to conditions stipulated herein below, the Bank of Tanzania has approved your request for:

- (i) NIC Bank Tanzania Limited to change its name and brand identity into NCBA Bank Tanzania Limited;*
- (ii) Re-organization of the NCBA Group business in Tanzania with a view to operating one entity through transfer of the business, assets and liabilities of*

Commercial Bank of Africa Tanzania Limited to NCBA Bank Tanzania Limited;

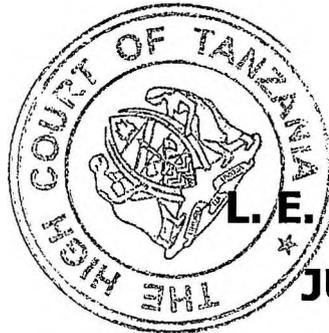
- (iii) Commercial Bank of Africa Tanzania Limited to surrender licenses related to the banking business including the licenses issued by the Bank of Tanzania for conducting banking business and to operate payment systems; and*
- (iv) Immediately upon surrendering of the licences, to change the name of Commercial Bank of Africa Tanzania Limited to CBA Tanzania Limited and to amend all constitutional documents of CBA Tanzania Limited to remove any reference to conduct the banking business."*

It is from the above wording of the Supervisor of the Applicants herein being Bank of Tanzania, the same have approved the above Applicants' Application. In the event therefore, the Applicants' Application is genuine and that the same have to be granted to smoothen the banking business to the managed bank as demonstrated by the Applicants in this Application.

In the event therefore, the Application is accordingly **GRANTED** as prayed. For avoidance of doubt, the Court is hereby granting leave to the Applicants for the 1st Applicant to replace the 2nd Applicant in **Civil Case No. 183 of 2018** pending before this Honourable Court.

I make no order as to costs.

It is so ordered.



A handwritten signature in black ink, appearing to read "L. E. Mgonya".

L. E. MGONYA

JUDGE

12/11/2021

Court: Ruling delivered in my chambers in absence of the 1st and 2nd Applicants, Mr. Killey Mwitasi, Advocate holding brief Roman Masumbuko, Advocate for the Respondents and Mr. Richard, RMA.



A handwritten signature in black ink, identical to the one above.

L. E. MGONYA

JUDGE

12/11/2021