

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM  
CIVIL CASE NO. 126 OF 2020**

**ENOSHI N. LUKUWI ..... PLAINTIFF**

**VERSUS**

**CRDB BANK PLC ..... DEFENDANT**

*Date of Last Order: 15/03/2022*

*Date of Ruling: 11/07/2022*

**RULING**

**MGONYA, J.**

The suit before the Court is filed by the Plaintiff on claims of **Tshs. 350,000,000.00** being compensation for an accident caused by the Defendant's driver, while he was in the course of his employment duties.

Before hearing the suit, the Defendant raised a point of Preliminary Objection as hereunder:

- 1. That, the suit is not maintainable against the Defendant since she has been wrongly impleaded in this matter.***

At the hearing of an objection, the Plaintiff was represented by Ms. Specioza Ndunguru and Ms. Costancia

Sospeter learned Advocates and Ms. Mariam Ismail learned Advocate was for Defendant.

The Defendant's counsel submitting that, the Defendant has been improperly sued as she was not involved in the accident. The driver who was involved in the accident is not joined to the suit while he is a necessary party. It is the Defendant's counsel view that non joinder of the Defendant's driver as a necessary party to the suit renders the entire suit incompetent hence should be struck out. Further, the Counsel stated that the Plaintiff has contravened the law under **Order I Rule 3 of the Civil Procedure Code, Cap. 33. [R. E. 2019]** which is insisting to join Defendant's driver who caused an accident as a necessary party to a suit.

In submitting against an objection, the Plaintiff's Counsel stated that the Defendant's driver is not a necessary party in a suit. It is the Plaintiff's position that he has sued the Defendant under vicarious liability as the Defendant being employer of the said driver, it is right and proper party that the Plaintiff could claim his reliefs from as he is the *dominus litis*.

Further, the Counsel referred this court to the **Order I Rule 9 of the Civil Procedure Code, Cap. 33 [R. E. 2019]** which states:

*"A suit shall not be defeated by reason of the mis joinder or non joinder of parties, and the court may in every suit*

*deal with the matter in controversy so far as regards the right and interests of the parties actually before it."*

In regards from the above submission, the Plaintiff prayed the court to overrule the objection on a suit especially at earliest stage due to non-joinder of parties.

In determining this preliminary objection, the Court perusing the pleadings and submissions of both parties and finds out the main issue as to whether the suit was properly filed before the court. It is apparent facts that there was a car accident occurred and the Plaintiff suffered damage which caused by the Defendant's driver. Regarding the nature of claim before the Court, it concerns about the compensation from the negligence of the Defendant's driver caused to the Plaintiff. The Driver and a car involved in the accident was in the course of his employment and serving his Employer Defendant. In the line of **Order I Rule 3 of the Civil Procedure Code, Cap. 33 [R. E. 2019]** which provides:

***"All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or .....in the alternative where, if separate suits were brought against such persons, any common question of law or fact would arise "***

From the above observations, it is clear that the Defendant's driver is a proper party who directs' involved in the

accident with the Plaintiff. In this respect, the separate suit filed against the Defendant and her driver would arise the common question of law and fact. However, the failure to implead a proper party in a case does not exonerate the Defendant from liability and the court's ability to adjudicate the issues raised in the Plaintiff.

Furthermore, in respect to **Order I, Rule 9 of the Civil Procedure Code, Cap. 33 [R. E. 2019]**, that the court has been given a mandate to regards the rights and interests of the parties in a suit and shall not a subject to be defeated by reason of the non joinder of parties. Hence, the failure to join a proper or necessary party in the suit is cured by **Order I Rule 9 of the Civil Procedure Code**. I agree with Plaintiff's counsel that the best this honourable Court can do is to order that the defendant's driver be included as a co Defendant in this case.

In the event therefore, **the preliminary objection by Counsel for the Defendant is sustained**. In lieu of striking out the suit with costs, I direct that the Plaintiff, if he still wishes to pursue his claims, is advised to sue the Defendant plus the other proper party.

**The suit is accordingly struck out with leave to refile, subject to limitation of 14 days.**

No order as to costs.

It is so ordered.



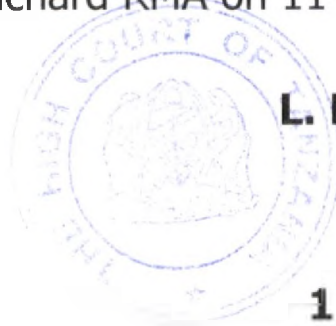
  
**L. E. MGONYA**

**JUDGE**

**11/07/2022**

**Court:**

Ruling delivered before Honourable **J. Luambano DEPUTY REGISTRAR** in the presence of the Specioza Nduguru Advocate assisted by Constancia Sospeter holding brief of Ms Hamisa Nkya Advocate for Defendant also appearing for the Plaintiff and Mr. Richard RMA on 11<sup>th</sup> July, 2022.



  
**L. E. MGONYA**

**JUDGE**

**11/7/2022**