

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 368 OF 2023

(Arising from Civil Case No. 53 of 2022)

COCA- COLA KWANZA LIMITED APPLICANT

VERSUS

PAULINA KOKKAN.....1ST RESPONDENT

PAMELA KOKKAN2ND RESPONDENT

RULING

10 & 10/08/2023

NKWABI, J.:

On 19th July, 2023 the above -named applicant lodged in this court an application by way of chamber summons under Order 1, Rule 14 (1), (2) and section 95 of the Civil Procedure Code 1966 [Cap. 33 RE 2022], (hereinafter referred to as the CPC) seeking for the following reliefs;

- 1. That this Honourable court be pleased to grant the applicant's prayer for leave to present a third-party notice and join the Insurance Company as necessary third party in relation to the main suit namely; Civil Case No. 53 of 2022 between the same parties.*
- 2. That this application be heard ex-parte.*
- 3. That the costs of the application be borne by the applicant.*

4. That any other relief this honourable Court may deem just and fit to grant.

The application has been taken at the instance of NW Law Associates and it is supported by the affidavit duly sworn by Mr. Atlay Esao Thawe, learned counsel for the applicant. The application originates from civil case No. 53 of 2022.

The application was heard ex-parte, in which the applicant was represented by Mr. Atlay Esao Thawe learned advocate. The counsel for the applicant simply adopted the affidavit to form party of his submission. He had nothing to elaborate.

Having gone through the affidavit in support of the application, the sole question for my determination is whether the application has merits. As I have stated before, the instant application has been preferred under Order 1, Rule 14 of the CPC. The said provision reads:

14.-(1) Where in any suit a defendant claims against any person not a party to the suit (hereinafter referred to as "the third party")-

(a) any contribution or indemnity; or

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

Hence in determining the instant application, the duty of the Court is to determine whether the application has met the conditions set out in the provision of the law quoted above.

It is the requirement of the law that the applicant must indicate that the relief or remedy relating to or connected with the subject matter of the suit and substantially the same as a relief or remedy claimed by the plaintiff.

In the affidavit in support of the application, the applicant avers that this application was filed with a view to seek the leave of the court to make a formal application to present a third- party notice to the Insurer. The affidavit reveals further that, the subject matter of this suit is centered on product liability and such risks are duly covered by reputable insurance company namely; the Heritage Insurance Co. Tanzania Ltd, who the applicant is seeking leave of this court to join as necessary third- party

risks arising from soft drinks which are manufactured, bottled, sold and distributed by the applicant.

The essence of third -party procedure was expounded in the case of **Metropolitan Tanzania Insurance Co. Ltd vs. Frank Hamad Pilla**, Civil Appeal No. 191 of 2018 CAT at Dodoma (unreported) at Pg. 16 in which it was held that the third -party procedure is based on the principle of contribution and/ indemnity upon the defendant being found liable to the plaintiff. The third party is not to be treated as a party to the suit or supposed to be a defendant in the suit. Instead, he or she stands to be a third party and a non- party to the suit.

In the instant application the insurer is not a party to the main suit and the applicant has argued that the nature of the subject matter of the case is related on product liability and risks thereof are insured by the respondent. Hence the applicant seeks an indemnity or contribution in respect of the product should it be found liable.

It is for the foregoing reasons I am satisfied that the application has met the conditions stipulated under Order 1 Rule 14 of the Civil Procedure Code. Consequently, the applicant is granted a period of 14 days within which to present a third-party notice.

Costs shall abide by the outcome of the main case. I so order.

DATED at **DAR ES SALAAM** this 10th day of August 2023.



A handwritten signature in blue ink, appearing to read "J. F. Nkwabi".

J. F. NKWABI

JUDGE