

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE SUB- REGISTRY OF MWANZA**  
**AT MWANZA**

**MISC. APPLICATION NO. 134 OF 2023**

*(Arising from Misc. Civil Application No. 24 of 2022 and Misc. Civil Application No. 14 of 2022.  
Originating from Civil Case No. 09 of 2022 of the District Court of Geita at Geita)*

**DANIEL HAJI MAYUYA ..... APPLICANT**

**VERSUS**

**WERONS MICRO CREDIT LIMITED..... RESPONDENT**

**RULING**

30<sup>th</sup> October, & 1<sup>st</sup> November, 2023.

**MUSOKWA, J.**

This is an application for extension of time to file for revision out of time against an execution order. This ruling is in respect of the preliminary objection taken at the instance of learned counsel for the respondent, that failure by the applicant to join the court broker as a necessary party renders the application incompetent. The affidavit in support of the chamber summons, counter-affidavit and other record provides the background to the matter as narrated hereinunder: -

The dispute is premised on the breach of contract for repayment of a loan facility. It is alleged that in 2021, the respondent herein advanced several loan installments to the applicant towards a loan facility contract of TZS. 32,000,000/= which was not honored by the applicant. The respondent, as a result, filed Civil Case No. 09 of 2022 at Geita District Court against the applicant for breach of the said contract. Subsequently, on 15<sup>th</sup> November 2021, the parties herein entered into a settlement deed of TZS. 40,000,000/=. Following inaction on the part of the applicant herein, the respondent filed an application for execution through Misc. Civil Application No. 14 of 2022. It is on record that substituted service was affected to the applicant

herein via Nipashe Newspaper, published on 15<sup>th</sup> July, 2022 on page 19. The trial court, in an *ex-parte* hearing, granted the order for execution on 4<sup>th</sup> August, 2022. In that regard, the court appointed Shashinhale Auction Mart General & Trading Company Limited (the court broker) to execute the court orders. Feeling aggrieved, the applicant filed Misc. Civil Application No. 24 of 2022 before the District Court, applying for stay of execution against the execution order and proceedings thereof. However, on 7<sup>th</sup> August 2023, the application was dismissed by the trial court resulting to the present application before this Court.

As indicated earlier, the competency of this application was challenged by the learned counsel for the respondent, Mr. Yuda Kavugushi on the applicant's failure to join the court broker as a necessary party. On the other hand, the applicant was duly represented by Mr. Marwa Samuel, learned counsel.

In his concise submission, Mr. Kavugushi for the respondent contended that a necessary party is one who has an interest in the subject matter in dispute. In view of the foregoing, he submitted that the contentious matter between the parties emanates from the execution orders in Misc. Civil Application No. 14 of 2022. Mr. Kavugushi emphatically stated that the essence of joining necessary parties is to facilitate any matter before the Court to be determined effectively. The rationale behind the principle, he submitted further, is to afford each party with interest on the subject matter, the fundamental right to be heard.

The learned counsel argued that the application before the Court, is for extension of time to file an application for revision intending to challenge the execution orders. The execution orders, he added, included appointment of a court broker, to effect the execution. In this regard, it was the submission of the learned counsel that the appointed court broker is undisputedly a necessary party to this application.

In substantiating his arguments, the learned advocate relied upon ***Order I rule 3 of the Civil Procedure Code, Cap 33 R.E. 2019*** (CPC). Mr. Kavugushi reiterated that failure to include the court broker before the Court, will result in denial of his right to be heard. On that basis, it was submitted that the application is incompetent and the learned counsel prayed for the application to be struck out with costs.

In his rebuttal submissions, Mr. Marwa submitted that the application is well founded. The learned counsel proceeded to state that the preliminary objection lacks merit for failure to reflect a point of law. Mr. Marwa opined that the preliminary objection raised is contrary to the legal standards. The case of **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Limited** [1969] E.A 696 was cited in support of his position. The learned counsel further argued that counsel for the respondent failed to precisely point out the violated provision of the law for failure to join the court broker as a necessary party. Citing ***Order, I rule 9 of the CPC***, Mr. Marwa reiterated that non-joinder of parties shall not defeat the suit.

The learned advocate invited the Court to refer to the original case that was filed before the trial court, to wit, Civil Case No. 09 of 2022 whereby the parties to that case were Daniel Mayuya, the applicant herein and Werons Micro Credit Limited, the respondent herein. Mr. Marwa added further that all subsequent miscellaneous applications filed at the trial court had the same parties who are also reflected in the application before this Court. Emphatically, he submitted that the dispute at hand is not in connection with the court broker but is between the parties to this application. Therefore, in his view, there is no valid ground to warrant the joining of any additional party. The case of **Juma B. Kadara Vs. Laurent Mkande** (1983) TLR 103 which expounds the concept of a necessary party was preferred. Another case relied upon by counsel for the applicant was **Lajuna Shubi Balonzi, Senior Vs. Registered**

**Trustees of CCM** (1996) TLR 203. In this case it was held that only substantive matters should be brought to the attention of the court and litigants should refrain from abusing the court process by entertaining unfounded claims. Mr. Marwa prayed that the objection be overruled for want of merit. He further prayed for costs.

In rejoining, Mr. Kavugushi learned counsel adopted his submission in chief placing emphasis on his initial prayer that the application be struck out. The learned counsel submitted that, in as much as this application intended to challenge the execution orders, the court broker is a necessary party. He further added that non-denial by counsel for the applicant that the application at hand relates to challenging the execution orders; and not objecting to the appointment of the court broker to execute the said orders, is an implied admission that the court broker is in fact a necessary party. The learned counsel disputed the authorities cited by advocate for the applicant submitting that the principles embodied in the cited authorities are irrelevant to the matter before this Court.

The pertinent issue for determination by this Court is whether or not a court broker is a necessary party. In the event the holding of the first issue is in the affirmative, the second issue for determination is whether failure to join the court broker renders the application incompetent before this Court.

The application before this Court is, indeed, in connection with execution orders in which a court broker was appointed to carry out the said execution. The affidavit of the applicant under paragraph 6, provides as follows: -

*“That on 16<sup>th</sup> August 2022, I approached the court through Miscellaneous Civil Application No. 24 of 2022 for **temporary injunction upon executing my properties in which the court dismissed the prayer on 7<sup>th</sup> August, 2023.**” [Emphasis added]*

Similarly, the ruling by the District Court is cited as follows: -

***"Baada ya amri ya utekelezaji kuanza kufanya kazi kupitia dalali wa mahakama Shashinhale, ndipo mleta maombi ameibuka na kuleta maombi haya madogo akiomba zuio la muda (stay of execution) dhidi ya utekelezaji wa amri ya mahakama hii ya tarehe 4/8/2022 iliyoelekeza ukamatwaji wa mali za mleta maombi..."***  
*[Emphasis added]*

I have taken note of the discrepancy between the applicant's affidavit and the ruling on Misc. Civil Application No. 24 of 2022 in relation to the use of the words "*temporary injunction*" and "*stay of execution*". While the affidavit provides that the application is for temporary injunction, the ruling refers to an application for stay of execution. Nevertheless, the said discrepancy does not affect the determination of this matter.

The relevant fact at this point is that execution proceedings have been in progress through the court broker, from 4.8.2022 when the execution orders were granted. This application was filed in this Court on 12.9.2023, more than a year later. So far, this court is not aware of the stage reached or the status of the execution by the court broker. These essential facts can only be provided by the court broker once impleaded in this matter. Undoubtedly, it will enable the court to effectively and completely adjudicate upon and settle all issues in the matter.

I therefore subscribe to the arguments advanced by learned counsel for the respondent; that in consideration of the nature and circumstances of the matter before this Court, the court broker is in fact, a necessary party. Having answered the first issue in the affirmative, the second issue is whether failure to join the necessary party renders the application incompetent.

The learned counsel for the applicant submitted that the preliminary objection raised is contrary to the legal standards, relying on the case of **Mukisa Biscuits Manufacturing Co. Ltd** (*supra*). In addition, the learned counsel submitted that under **Order I rule 9 of the CPC**, non-joinder of parties does not defeat the suit and therefore the objection is baseless.

In the case of **Godfrey Nzowa vs Selemani Kova and Tanzania Building Agency**, Civil Appeal No. 183 of 2019, (unreported) the Court of Appeal of Tanzania sitting in Arusha deliberated the issues of non-joinder of a necessary party and its legal consequences. It was partly held on page 10 as follows:

*"...the objection raises a point of law based on ascertained facts and not on evidence and if the objection was to be sustained it will dispose of the matter and thus falls within the ambit of the factors to consider in determination of a pure point of law outlined in **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Limited [1969] E.A 696...**" [Emphasis added]*

The Court of Appeal of Tanzania in the case of **Godfrey Nzowa** (*supra*) held further on page 17 that: -

*"...while alive to the provision of Order 1 Rule 9 of the CPC, it is important to also take into account the fact **each case has to be determined in accordance with its peculiar circumstances...**" [Emphasis added]*

Therefore, I decline to be swayed by the submission advanced by learned counsel for the applicant because his arguments are sufficiently addressed by the Court of Appeal of Tanzania. The peculiar circumstances of this matter dictate the court broker to be joined as a necessary party. Equally important, all objections on the ground of non-joinder or misjoinder of parties need to be taken at the earliest

possible opportunity. Regarding this point, I wish to cite **Order I Rule 13 of the CPC** which provides that:

*"All objections on the ground of non-joinder or misjoinder of parties shall be taken **at the earliest possible opportunity** and, in all cases where issues are settled, at or before such settlement unless the ground of objection has subsequently arisen; and any such objection not so taken shall be deemed to have been waived."*  
*[Emphasis added]*

Being guided by the above provision, I am of the settled opinion that the respondent raised the preliminary objection on non-joinder of a necessary party at the appropriate time.

In the upshot, the application before me is therefore incompetent for non-joinder of a necessary party. I hereby sustain the preliminary objection. Accordingly, the application is struck out. Since the execution of a decree is in progress, there is no order as to costs.

It is so ordered.

DATED at **MWANZA** this 1<sup>st</sup> day of November, 2023.



**I.D. MUSOKWA**

**JUDGE**

**Court:**

Ruling delivered in the presence of both parties, this 1<sup>st</sup> day of November, 2023.



**I. D. MUSOKWA  
JUDGE**