

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**MISCELLANEOUS COMMERCIAL APPLICATION NO. 117 OF 2022**

**(Arising from Commercial Case No 83 of 2021)**

**BETWEEN**

**PAN AFRICAN ENERGY(T) LIMITED ..... APPLICANT**

**Versus**

**ZANZIBAR MARINE AND DIVING LIMITED.....1<sup>st</sup> RESPONDENT**

**AJE MARINE COMPANY LIMITED.....2<sup>nd</sup> RESPONDENT**

**TANZANIA PORTS AUTHORITY .....3<sup>rd</sup> RESPONDENT**

**Date of last order: 18<sup>th</sup> July 2022**

**Date of Ruling: 22<sup>nd</sup> July, 2022**

**RULING**

**MKEHA, J.**

The present application arises from Commercial Case No. 83 of 2021 in which one RAPHAEL LOGISTICS (T) LIMITED is suing PAN AFRICAN ENERGY (T) LIMITED, the applicant/defendant. In the said Commercial Case, the plaintiff prays against the defendant for the following reliefs:

- (a) A declaration that the applicant is in breach of crane hire agreement;
- (b) An order that the application shall pay to Raphael Logistics (T) Limited a sum of TZS 35, 594,660/= being the outstanding crane hiring charges;
- (c) An order directing the applicant to pay Raphael Logistics (T) Limited a sum of USD 100,000 being loss of expected income occasioned by sinking of the crane;
- (d) An order directing the applicant to pay Raphael Logistics (T) Limited a sum of TZS 68,150,500/= being the loss of expected income from 19<sup>th</sup> May 2021 when the crane hire agreement ceased to 9<sup>th</sup> July 2021 when the suit was filed in court at the agreed rate of TZS 1,363,000/= per day;
- (e) An order directing the applicant to pay Raphael Logistics (T) Limited a sum of TZS 1,363,000 per day from 9<sup>th</sup> July 2021 when the suit was filed till the date of final payment;
- (f) An order directing the applicant to pay Raphael Logistics (T) Limited a sum of Euro 150,000 being the purchase value of the mobile crane;
- (g) An order directing the applicant to pay Raphael Logistics(T) Limited interest on the alleged loan amounting to Euro 150,000

allegedly secured by Raphael Logistics (T) Limited from the bank to buy the crane;

- (h) Payment of the general damages to the tune of TZS 100,000,000/=;
- (i) Payment of interest on the decretal amounts at the prevailing commercial rate;
- (j) The applicant be ordered to pay interest on the decretal amount at a court rate of 12% per annum from the date of judgment till when the decretal amount is satisfied in full;
- (k) Costs of the suit to be paid by the applicant and;
- (l) Any other relief the court may deem fit to grant.

Following service of the plaint to the defendant in Commercial Case No. 83 of 2021, the defendant filed the present ex-parte chamber application in which leave of the court is sought to present a Third-Party Notice against the three respondents namely: Zanzibar Marine and Diving Limited, Aje Marine Company Limited and Tanzania Ports Authority on the ground that, the Applicant is entitled to a contribution and / or indemnity from the Respondents in relation to the Plaintiff's claim against the Applicant in Commercial Case No. 83 of 2021. The application is made under Order 1 Rule 14 (1) and (2) of the Civil

Procedure Code. It is supported with an affidavit sworn by Ms Stella Nissa Ndossi, Principal Officer of the Applicant.

Mr. Rweikiza learned advocate appeared for the applicant. When the matter was called for hearing, the learned advocate commenced his submissions by adopting the affidavit supporting the application as part of his submissions. According to the learned advocate, the affidavit fully explains the nexus between the defendant's claims against the third parties and the Plaintiff's claims against the Applicant.. He referred this court to the decision in **YAFESI WALUSIMBI Vs ATTORNEY GENERAL OF UGANDA (1959) 1 E.A 223** regarding conditions for joining the third parties. He then rested his case.

The affidavit accompanying the application indicates the following in paragraphs 3 to 8:

That, Raphael Logistics (T) Limited claims from the Applicant damages attributed to the hire of a crane to the Applicant for its operations at Songosongo Island and the subsequent sinking of the crane at Dar es salaam Port.

That, the marine vessel that carried the crane at the time of its sinking arrived at Dar es salaam Port from Songosongo Island on 20<sup>th</sup> May 2021 for discharging back the crane to the plaintiff.

The Applicant became aware of the sinking of the crane on 23<sup>rd</sup> May 2021 through social media. The Applicant also received a call from the first Respondent which is the operator of the marine vessel which carried the crane that the crane had sunk.

That, the plaintiff filed a suit against the defendant/applicant seeking reliefs as indicated hereinabove some of which are attributed to the sinking of the crane. The Final Pre -Trial Conference has been concluded and the suit awaits trial.

That, after conclusion of the Final Pre-Trial Conference the plaintiff served the defendant/applicant with a list of additional documents intended to be relied upon in proving the cause of action and the reliefs sought. One of the annexures to the document is a report by the Tanzania Ports Authority (the Detailed Investigation Report).

That, the Detailed Investigation Report shows that at the time of the sinking of the crane the marine vessels were owned by the Second Respondent and was being operated by the First Respondent. The Detailed Investigation Report further attributed the sinking of the crane to the negligence on part of the employees of the First and Third Respondents.

That, because the Detailed Investigation Report shows that at the time of sinking of the crane, the marine vessels that carried the crane was owned by the second Respondent and operated by the First Respondent and because the aforesaid report attributed the sinking of the crane to the negligence of the employees of the First and Third Respondents, the Applicant, in case is adjudged liable to the Plaintiff, shall seek indemnification from all the three Respondents to compensate it for reliefs arising from the sinking of the crane.

The only issue for determination is **whether conditions for joining the three respondents are in existence.** In the case of **HASNAIR M. MURJI VS ABDULRAHIM A SALUM t/a ABDULRAHIM ENTERPRISES, CIVIL APPEAL NO. 6 OF 2012**, the Court of Appeal stated the following regarding conditions for joining a third party:

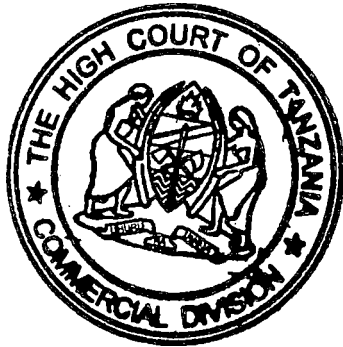
*"In invoking the third party procedure, what is material is not the Plaintiff but the right of the defendant to indemnity from the third party. The policy behind this rule is that, the defendant, who has got a claim against a third party need not be driven to a fresh suit against the third party to put the indemnity in his favour into operation or to establish his entitlements to contribution from the third party. The claim and right interse of the defendant and the third party have to be decided in the third party proceedings."*

In the case of **YAFESI WALUSIMBI Vs ATTORNEY GENERAL OF UGANDA (supra)** the condition is simply stated thus, in order that a third party be lawfully joined, the subject matter between the third party and the defendant must be the same as the subject matter between plaintiff and defendant and the original cause of action must be the same. 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. See: **WYNE VS TEMPEST (1897) 1 CH 110.**

The applicant's affidavit demonstrates in paragraphs 3 to 8 that, the subject matter between the third parties and the defendant/applicant is the same as the subject matter between the plaintiff and the defendant/Applicant in the original case i.e. Commercial Case No 83 of 2021. I am also satisfied that the original cause of action is the same. I therefore hold that, the conditions for joining the third parties are in existence.

On strength of the applicant's affidavit and submissions by the learned advocate for the applicant, I grant leave to the applicant/defendant to present a Third- Party Notice to the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. The exparte application is granted. Seven days' time is given for the applicant to present the said notice. I make no order as to costs.

DATED at DAR ES SALAAM this 22<sup>nd</sup> day of July 2022.



  
**C. P MKEHA**

**JUDGE**

**22/07/2022**

**Court:** Ruling is delivered in the presence of Mr. Rweikiza learned advocate for the Applicant.



  
**C. P. MKEHA**

**JUDGE**

**22/07/2022**