

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR-ES-SALAAM  
MISC. COMMERCIAL APPLICATION NO.137 OF 2023  
(Arising from Commercial Case No.70 of 2023)**

GOLDEN COACH LIMITED .....APPLICANT

**VERSUS**

ALLIANCE INSURANCE CORPORATION LTD .....RESPONDENT

Date of the Last order: 08/09/2023  
Delivery of the Ruling: 11/09/2023

**RULING**

**NANGELA, J.,:**

This application was brought to the attention of this court under a certificate of urgency. The urgency of the matter rests on the fact that it has potential effects on a pending suit which is before this same court, (Commercial Case No.70 of 2023) and which involves the same parties.

In the chamber summons filed by the Applicant under Rule 24(1) of the High Court (Commercial Division) Procedure Rules, 2012 (as amended 2019) and Order 1 Rule 10(2) of the Civil Procedure Code, Cap.33 R.E 2019, the Applicant is craving for the following orders, that:

- (i) this Honourable court be pleased to depart from its scheduling

order fixed on the 25<sup>th</sup> day of July 2023 and allow the Applicant to amend the Plaint for purposes of joining two necessary parties in the name of C. Steinweg Bridge (PTY) and Citic Metal (HK) Limited as co-defendants to the suit, namely Commercial Case No.70 of 2023.

- (ii) Any other relief this Honourable Court may deem fit and just to grant under the circumstances.
- (iii) Cost of this Application be in the cause.

The chamber summons filed in this court by the Applicant was supported by an affidavit affirmed by Mr. Ali Mohamedraza Masumali Dewji. On the 06<sup>th</sup> day of September 2023, the Respondent filed a counter affidavit affirmed by one, Mr. Rajiv Kumar. The filing of the counter affidavit followed an order of this court dated the 04<sup>th</sup> day of September 2023 given that the matter was filed under a certificate of urgency.

On the 8<sup>th</sup> day of September 2023, the parties appeared before the court, and they made oral submissions. On the material date, Mr. Nobert Mlwale, learned counsel appeared for the Applicant while Mr. Allen Nanyaro, learned counsel appeared for the Respondent. Submitting in support of the application, Mr. Mlwale told this court that the Applicant seeks in the first instance a setting aside of the scheduling order of this court dated the 1<sup>st</sup> of August 2023. Adopting the contents of the affidavit filed in support of this application, he told this court that, under section 95 and under Order VIII rule 23 of the of the Civil Procedure Code, Cap. 33 R.E 2019 this Court may, where there is shown good case, depart from its previous scheduling order.

Mr. Mlwale told this court that, in this application, the Applicant is seeking for leave of this court to be allowed to join two more parties to the suit who are necessary parties to allow this court to effectively determine the main suit pending in this court. He told this court that having scanned through the defence the Applicant find that unless such parties are joined to the suit, the court cannot effectively determine whether the main suit. He thus urged this court to

depart from its previous scheduling orders and proceed to grant the application.

Mr. Mlwale submitted further that, the provisions of Rule 24(1) of the High Court (Commercial Division) Rules 2012 (as amended) and Order 1 Rule 10 (2) of the CPC, Cap.33 R.E 2019, do allow this court to grant amendment to the pleadings. He urged the court to grant the prayer since it will enable it to appropriately and effectively determine the issues involved in the main suit once and for all. He also prayed that costs of this application be in the cause.

For his part Mr. Nanyaro opposed the granting of this application. Adopting the contents of the counter affidavit filed in this court by the Respondent, Mr. Nanyaro submitted that, the Applicant has not been able to demonstrate that there is sufficient cause for this court to depart from its earlier scheduling orders. He contended that what the Applicant is trying to employ is just a delaying tactic so that the main cause is further delayed. He submitted that those whom the Applicant wants to join as Co-defendants can as well be made witnesses.

Mr. Nanyaro submitted, in the alternative, that, should this court be pleased to grant the application, then the Applicant should pay costs since Order VIII Rule 23 of the CPC does provides that the party seeking departure from the scheduling orders should bear the costs.

In a brief rejoinder, Mr. Mlwale reiterated his main submission and submitted that, the Applicant has demonstrated good cause for the departure from the previous scheduling orders of this court. He told the court that what triggered the application is the written statement of defence which has shown that the new parties need to be joined in this case if the court is to give any effective remedy to the Applicant in the main case. He, therefore, urged this court to grant the prayers sought contending that doing so will enable the Applicant to amend the Plaint and implead the two co-defendants for appropriate and effective determination of the main suit.

The issue which I need to consider in this application is whether there has been a demonstrable good cause to warrant this court to depart from its earlier scheduling orders and grant the application at hand. In the cases of **Gastech**

**Enterprise vs. National Bank of Commerce Ltd**, Misc. Commercial Cause No.166 of 2018 and that of **Prashant Motibhai Patel and Another vs. Azania Bank Limited and Another**, Commercial Case No. 37 of 2020, this Court (Nangela, J.) did consider at length the issue of amendments and prayer for departure from the Scheduling Orders. In those cases, this Court stated as follows:

“Essentially, the proposed amendments will only be inappropriate, and, thus, rejected if it could be established that such amendments are being made in bad faith, or after an undue delay, thus prejudicing the opposing party, or that, such amendments are futile. The futility of such amendments will include amendments which would fail to state a claim upon which relief could be granted. All in all, at the end of the day, it is the consideration of prejudice to the opposing party that carries the greatest weight, and, even if the amendment will add causes of

action or parties, such eventualities will not scuttle the liberality in granting leave to amend pleadings. Absent prejudice or a strong showing of any of the remaining factors, set out herein above, a presumption in favour of granting leave to amend exists.”

In the **Gastech Enterprise’s case** (supra), this Court stated, further, that:

“to obtain an **amendment of the scheduling order**, a party must apply for such, and, **as a matter of necessity, must demonstrate "good cause"** for such amendment. In essence, a court’s decision on **what constitutes the "good cause"** will include focusing on **the diligence (or lack thereof) of the party requesting for such amendment more than it does on any prejudice to the other party.** Otherwise, **a Court will disfavour prayers to amend whose timing**

**prejudices the opposing party by  
let us say, requiring a re-opening  
of discovery with additional  
costs, a considerable deferment  
of the trial, and a likely major  
variation in trial strategy.”**

(Emphasis added).

Cases which also emphasised on the need to show '*good cause*' if the Court is to vacate its scheduling orders are the case of **Tanzania Petroleum Development Corporation (TPDC) vs. GAPCO (T) Ltd**, Commercial Case No.141 of 2001 (unreported) and National **Bank of Commerce vs. Vaginga Family & 3 Others**, Commercial Case No.125 of 2001 (unreported).

Essential what constitute good cause or good reasons may not be given a straight jacket definition. However, it does denote good and demonstrable reasons which wield sufficient conviction that any reasonable person would accommodate then as being cogent in the circumstance. In the current application, the reason fronted before me is that the Applicant intends to bring to the main case two additional defendants whom she has deemed necessary parties if this



court it to meaningfully and effectively determine the main suit once and for all.

Although Mr. Nanyaro has opposed the application, as I read the affidavit and the reply to the counter affidavit, and based on the submissions of Mr. Mlwale, I tend to agree with Mr. Mlwale that the Applicant has good cause to warrant that this court grant the prayers sought.

As regards to costs, the law is clear. Order VIII Rule 23 of the Civil Procedure Code, Cap.33 R.E 2019 does provide as here under:

Where a scheduling conference order is made, no departure from or amendment of such order shall be allowed unless the court is satisfied that such departure or amendment is necessary in the interests of justice and the party in favour of whom such departure or amendment is made shall bear the costs of such departure or amendment, unless the court directs otherwise."

In this present application, it is the Applicant who is a Plaintiff in the main case who has moved this court to seek for the departure from the scheduling order. Much as the reasons advanced are cogent, proper planning of her case ought to have noticed the necessity of joining the parties she wants to join by this time. It follows, therefore, that, being a party in whose favor the departure is made, she will as well be ready to bear the costs that goes with it.

In the upshot of all that, this court settles for the following orders:

- (i) That, the prayer seeking for departure from the scheduling orders of this court dated the 1<sup>st</sup> day of August 2023 is hereby granted and this court departs from the said scheduling order and all subsequent proceedings that followed therefrom.
- (ii) That, the Applicant's prayer to amend the Plaint in the Commercial case No.70 of 2023 to add two defendants in the name of C. Steinweg Bridge (PTY) and Citic Metal (HK) Limited as necessary parties to the said suit is also granted.

(iii) That, since it is the Plaintiff who sought a departure from the earlier scheduling orders, she should as well shoulder the costs of this application as per Order VIII Rule 23 of the CPC provides.

(iv) That, an amended Plaint with facts addressed to the two necessary parties and which does not change the contents of the existing facts in respect of the existing Defendant is to be filed on or before the 21st of September 2023.

(v) That, service to the Defendants be effected on the same date of filing.

(vi) That, Defendants should file their amended statements of defence on or before 12th of October 2023.

(vii) Reply to the Defendants written statements of defence be filed on or before the 26th of October 2023.

(viii) The main case No.70 of 2023 shall be called on for necessary orders on 2nd day of November 2023 at 8:30 am.

**It is so ordered.**

**DATED AT DAR-ES-SALAAM ON THIS**

**11<sup>TH</sup> DAY OF SEPTEMBER 2023**



*John Nangela*

.....  
**DEO JOHN NANGELA**  
**JUDGE**