

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 100 OF 2020

OASIS CONSULTING LIMITED.....PLAINTIFF

VERSUS

SALOME FESTO KAHAMBA.....DEFENDANT

Date of Last Order: 10.04.2021
Date of Ruling: 29.10.2021

RULING

V.L. MAKANI, J

The defendant in this suit filed Third Party Notice against KOTI BROTHERS LIMITED (the **1st Third Party**) and ISACK SAMUEL MUHILO (the **2nd Third Party**). This ruling is in respect of the preliminary objections raised by the 1st and 2nd Third Parties that:

- 1. The Third-Party notice is not maintainable at law.*
- 2. The Third-Party notice does not disclose the cause of action against the 1st Third Party.*
- 3. The application for Third Party is bad in law.*

The preliminary objections were argued by way of written submissions as ordered by the Court. The objections were argued by

Mr. Desdery Ndibalema, Advocate for the Third Parties. Ms. Joan Mwesigwa, Advocate represented defendant.

Arguing the preliminary objections, Mr. Ndibalema consolidated the first and third points of objections. He said that an application for Third Party is under Order 1 Rule 14 (2) of the Civil Procedure Code, CAP 33 RE 2002 (the **CPC**). He said among other things the provision requires an application to contain the claim by the applicant against the Third Party and its relation to the plaintiff's claim against the applicant. That under Order 1 Rule 14 (3) of the CPC, the Court has to determine to its satisfaction the justifiability and reasonability of the application with regard to any contribution or indemnity claimed by the applicant against the Third Party and any relief or remedy relating to the subject matter of the suit and substantially the same as remedies or reliefs claimed by the plaintiff. That it is upon such satisfaction that the court may grant leave to present a Third Party Notice under Order 1 Rule 14 (4) of the CPC. He said in this case the respondent only secured the order to file an application for the Third-Party Notice under Order 1 Rule 14 (3) of the CPC. That the defendant presented a Third-Party Notice on 07/12/2020 without leave of the Court contrary to mandatory provisions of Order 1 Rule

14 (1) of the CPC. That the procedure is improper and therefore the application should be struck out with costs.

On the second point of preliminary objection, Mr. Ndibalema said that the purported Third-Party Notice does not disclose cause of action. That there is nothing connecting the respondent with the 1st Third Party as being advantageous to the reliefs and/or indemnification from the Third Party in case the defendant becomes liable as against the claims by the plaintiff. Counsel relied on the case of **Civil Loaths Enterprises Vs Lindi Municipal Council & F.E.L.O Investment Limited, Civil Appeal No.04 Of 2019 (HC-Mtwara)** (unreported). He prayed for the preliminary objections to be sustained with costs.

Ms. Joan Mwesigwa, Advocate representing the defendant orally conceded to the preliminary objections raised and she said she did not find it necessary to file submissions in reply.

Since the preliminary points of objection have been conceded by the applicant, there is therefore no need to dwell on and discuss what is otherwise obvious meritorious objections. Thus, the raised points of

preliminary objections by the 1st and the 2nd Third Parties are hereby sustained and the Third Party Notice is struck out with costs.

It is so ordered.


V.L. MAKANI
JUDGE
29/10/2021

