

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 274 OF 2022

(Arising from Land Case No 60 of 2022)

ENOCK ELIKALIA MASSAM.....APPLICANT

VERSUS

DIDAS PETER KISALALA1ST RESPONDENT

JOYCE DIDAS KISALALA2ND RESPONDENT

17/8/2022 & 05/9/2022

RULING

A. MSAFIRI, J.

On 31st May 2022, the above named applicant lodged the present application, by chamber summons under Order XIV Rule (1) and (2), Sections 68(e) and 95 of the Civil Procedure Code [CAP 33 R.E 2019] (the CPC) seeking for the following orders namely;

- a. That this Honourable Court be pleased to grant leave for the applicant in this application to present a third part notice in respect of **DIDAS PETER KISALALA** and **JOYCE PETER KISALALA** for indemnity, relief or remedies connected to the subject matter of the main case.*
- b. Any other relief this Honourable Court may deem just and fit to grant.*

Adls.

The application has been taken at the instance of the applicant and is supported by an affidavit sworn by the Applicant himself.

When the application was called on for hearing on 29/6/2022, Mr. Said, learned advocate appeared for the applicant whereas the respondents did not enter appearance hence hearing proceeded in the absence of the respondents. The application was disposed orally.

Mr. Said having adopted the affidavit in support of the application contended that the present application has been preferred as per the provisions cited above. He submitted that part of the land in dispute which the applicant is occupying was sold to him by the respondents hence the respondents are in the position to indemnify all the remedies in the main case.

Having gone through the submission by learned advocate for the applicant in support of the application, the point for my determination is whether the present application has merits.

In the present application, the applicant seeks to have the respondents herein whom are not parties to the main suit to be brought as third parties to the said suit. Usually this procedure as stipulated under Order 1 Rule 14 (1) and (2) of the CPC is available for the defendant only hence the applicant is the first defendant to the main suit.

In the main suit which is Land Case No. 60 of 2022, the plaintiff is Mustapha Seif Ngane (suing as the administrator of the estate of late Seif Ngane) while the applicant herein is the first defendant and there are other

Alls.

six defendants. The plaintiff claims against the defendants jointly and severally among other reliefs is for declaration that the plaintiff is the lawful owner of the whole land unlawfully occupied by the defendants situated at Goba Ward (formerly Goba Kisauke) in Ubungo Municipality.

In my view, what the Court is required to do is to look at whether the application meets the requirements of the law. In the case of **Bhamji Laxman Limited v National Sisal Authority & the NBC** Civil Case No. 60 of 1993 (Unreported), Mwaikasu J (as he then was) held;

"At this juncture let it pointed out that a third party notice is for all practical purposes, a form of a claim by the defendant instituted against the third party, for the reliefs sought. As the defendant's claim against the third party hinge on the nature of the claim of the plaintiff against the defendant, it is for a fair and just adjudication of the dispute imperative that the third party should be supplied with sufficient facts as to make him know adequately the nature of the claim as to be in a position to prepare a proper adequate defence. The need for such sufficient facts to enable the third party identify the nature of the claim comes to the fore when one reads Rule 17 of Order 1 of the CPC."

In another case of **Metropolitan Tanzania Insurance Co. Ltd v Frank Hamad Pilla**, Civil Appeal No. 191 of 2018, Court of Appeal of Tanzania at Dodoma (unreported) at page 16, it was stated that the third

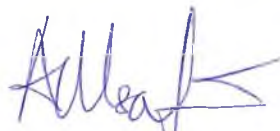
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party procedure is based on the principle of contribution and or indemnity upon defendant being found liable to the plaintiff. The third party is not to be treated as a party to the suit or supposed to be a defendant in the suit. Instead he or she stands to be essentially a third party and a non-party to the suit.

In the present application the applicant has demonstrated that the respondents are not parties to the suit for which the third party notice is being preferred. He has stated that what he is seeking from the third party is indemnity or contribution in case he is found liable to the plaintiff. This is due to the fact that the parcel of the land which the applicant is occupying forms subject matter of the disputed land and the same was sold to the applicant by the respondents. Hence from those facts, it is sufficient to allow the application.

Consequently it is reasonable and proper to grant leave to the applicant to serve a third party notice to the intended third party as prayed. Such notice must be presented **within 14 days** from the date of this ruling. Costs shall be in the cause.

It is so ordered.



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A. MSAFIRI,

JUDGE

05/9/2022

