

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

**MISC. LAND APPLICATION NO. 332 OF 2022**

(Arising from Land Case No. 215 of 2020)

**CHINA RAILWAY SEVENTH  
GROUP (CRSG) LIMITED .....APPLICANT**

**VERSUS**

**ELIZABETH SEME.....RESPONDENT**

Date of last order: 16.08.2022  
Date of Ruling: 30.09.2022

**RULING**

**V.L. MAKANI, J**

The applicant CHINA RAILWAY SEVENTH GROUP LIMITED (CRSG) LIMITED is seeking for an order for leave to present and issue a Third Party Notice against the respondent herein who is the co-defendant in the main suit, namely Land Case No. 215 of 2020. The application is under Order 1 Rule 14(1)(a)(b)(2)(a)(b)(c)(d) and Rule 23 (a) (b) of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**). The application has been sworn by Albert Syliverster Nkuhi, Counsel for the Applicant. The respondent filed a Counter affidavit to oppose the said application.

The application proceeded orally. In support of the application Mr. Nkuhi said, an application for Third Party has to have three conditions namely, (a) that the co-defendant has to be a party in the main suit, (b) the applicant has to claim contribution or indemnification ofrom the co-defendant, and (c) the applicant has to claim contribution or indemnity to what is claimed in the main suit. He relied on the case of **Houses & Homes Limited & Others vs. Jitesh Ladwa, Misc. Commercial Application NO. 19 of 2021 (HC-Commercial Division)**(unreported).

He said these conditions have been satisfied as the co-defendant is also a party in the main suit. As for the second condition, he said according to paragraphs 6 and 8 of the affidavit the claim by the applicant is contribution and indemnification by the co-defendant in case the suit is decided in favour of the plaintiff in the main suit. And for the third condition the claims of indemnification and contribution relates to the plaintiff's claim in the main suit (as per paragraphs 4 and 7 of the affidavit. Mr. Nkuhi said the plaintiff sued the applicant herein because there was a Lease Agreement between the applicant and the respondent who are the defendants in the main suit. He said the rationale of a Third-Party Notice is emphasized in the case of

**January Mshimba vs. The Registered Trustees of Mary Immaculate & Collaborators, Civil Appeal No. 127 of 2018**

**(CAT-DSM)**(unreported). He prayed for the application to be granted so that there would not be another suit between the applicant and the respondent so that they are all determined in the Third-Party Procedure.

In her response the respondent adopted the contents of the counter-affidavit and said that she did not have anything further to add. In the circumstances there was no rejoinder from Counsel for the applicant.

I have listened to the learned Advocate and the and have also gone through the affidavit and counter-affidavit. The main issue for consideration is whether this application has merit.

The Third-Party procedure is governed by Order 1 Rule 14 (1) of the CPC The said provision states:

*"14(1) where in any suit a defendant claims against any person not a party to the suit (herein after referred to as the third party)":*

- (a) Any contribution or indemnity; or*
- (b) Any relief or remedy relating to or connected with the subject matter of the suit and substantially the same as a relief or*

*remedy claimed by the plaintiff, the defendant may apply to the court for leave to present to the court a third party notice.*

*(c) Where, upon an application made under sub-rule (1), the court is satisfied that the defendant's claim against the third party is in paragraph (a) or (b) of that sub-rule and that, having regard to all the circumstances of the case, it is reasonable and proper to grant leave to the defendant to present a third party notice, the court shall upon such terms and conditions as it may think and conditions as it may think just; make an order granting the defendant leave to present a third party notice."*

In the case of **Hasnair M. Murji vs. Abdulrahim A. Salum t/a Abdulrahim Enterprises, Civil Appeal No. 6 of 2022 (CAT-Mtwara)** (unreported) the Court of Appeal quoted **Mulla on Civil Procedure**, Vol II, 15th Ed, p. 1303 where it was stated:

*"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 entitlement to contribution from the third party. The claim and right inter se of the defendant and the third party have to be decided in the third party proceedings: "*

In the case of **Viettel Tanzania Public Limited Company vs. Ivvanna Felix Teri, Misc. Civil Application No. 30 of 2019 (HC-Moshi Registry)** (unreported) my sister Hon. Mkapa, J. (as she then was) observed that:

*"In order for a third party to be lawfully joined, the subject matter between the third party and the*

*defendant must be the same as the subject matter between the plaintiff and the defendant and the original cause of action must also be the same. The rationale behind is to avoid multiplicity of suits in courts and the procedure is limited to a clam of indemnity/compensation and contribution over or against any person not a party to the suit."*

According to the plaint the main reliefs therein are a declaration that the plaintiff therein, that is, Francis Yustin Kambona is the rightful owner of Plot No. 119 Block L Mbezi M.D. (the **suit plot**). The plaintiff is also praying for vacant possession of the defendants. According to the affidavit in paragraphs 6, 7 and 8, as pointed out by Mr. Nkuhi, the subject matter is a Lease Agreement between the applicant and the respondent herein. It is apparent that these are two different causes of action. While in the main suit the cause of action is claim of the ownership of the suit plot, the cause of action between the applicant and the respondent herein is purely contractual based on the Lease Agreement. It is obvious that the reliefs are different hence indemnification would not be easy if not impossible. Indeed, I agree to the conditions of Third Party procedure set out in the **Houses & Homes Limited & Others** (supra) but the conditions have to be cumulatively applied but in this instance though the parties are the same, but the contribution and indemnification is far-fetched and the

subject matter in the main case is not the same as the one which is being sought by the applicant herein in terms of **Viettel Tanzania Public Limited Company** (supra). In his submissions Mr. Nkuhi said the plaintiff sued the applicant herein because there was a Lease Agreement between the applicant and the respondent who are the defendants in the main suit. But I have scouted the whole plaint there is nothing said by the plaintiff about the Lease Agreement or at all. This argument is therefore misconceived.

For the reasons above, the application is devoid of merit, and it is hereby dismissed. The main suit shall proceed as appropriate. Costs to follow events.

It is so ordered.



  
**V.L. MAKANI**  
**JUDGE**  
**30/09/2022**