

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

MISC. LAND CASE APPLICATION NO.344 OF 2023

(Originating from Land Case No.146 of 2020, by Hon. Hemedi, J.)

KAWA APARTMENTS LIMITED.....1ST APPLICANT
NATIONAL FURNISHERS LIMITED.....2ND APPLICANT

VERSUS

EXIM BANK TANZANIA LIMITED.....RESPONDENT

R U L I N G

Date of Last Order: 12.07.2023

Date of Ruling: 28.07.2023

T. N. MWENEGOHA, J.

This Ruling is in respect of an Application for leave to appeal to the Court of Appeal of Tanzania, by the applicants herein above. It follows the Judgment of Honorable Hemedi, J. dated 10th of May, 2023, in Land Case No.146 of 2020. It was brought under **Section 5(1) (c) of Appellate Jurisdiction Act, Cap 141 R. E. 2019, Section 47(1) of the Land Disputes Courts Act, Cap 216, R. E. 2019 and Rule 45 of the Court of Appeal Rules, G.N 368 of 2009, as amended by G.N No. 344 of 2019;** and accompanied by the affidavit of the applicants' Principal Officer, Bijal Nanalal Ramji.

The respondent on his part, raised a preliminary objection that, the Application is untenable, for joining the 2nd respondent who was not a party to the main suit.

The respondent's counsels, Antonia Agipiti and Mvano Macdonald Mlekano, contended that, in the Land Case No. 146 of 2020, the parties were **Kawe Apartment Limited versus Exim Bank Limited. National Furnishers Limited** was not a party to the case. Therefore, National Furnishers Limited cannot be added at this stage of leave. They referred to a number of authorities including the case of **Salim Amour Diwan versus The Vice Chancellor Nelson Mandela African Institution of Science and Technology and Another, Civil Application No. 116/01 of 2021, Court of Appeal of Tanzania at Dar es Salaam** (unreported).

They went on to argue that, the issue of names of parties to the case is central for their identification, hence they cannot be changed as decided in **CRDB Bank PLC {Formerly CRDB (1996)} versus George Mathew Kilindu, Civil Appeal No. 110 of 2017, Court of Appeal of Tanzania at Dar es Salaam** (unreported).

In reply, Advocate James A. Bwana, maintained that, there is no law which the applicant contravened by filling this Application. That the omission came as a result of striking out the counter claim by the defendant against the 2nd applicant.

He further contended that, it is the Court's own omission to skip to list the name of the 2nd applicant as a defendant in the Counter Claim. That, the omission became more glaring since the Ruling mentions therein of the Counter claim by the defendant against the 2nd applicant, which was equally struck out.

That, the fact that the citations on the Ruling and Drawn order do not list the 2nd applicant, as a party to the suit, do not take away the fact that the 2nd applicant was and is still a party in the Land Case.

I have considered the submission by parties for and against the objection. The issue for determination is whether, the objection has merits or not.

The respondent has claimed that, in the Land Case No. 146 of 2020, the parties were two, namely "***Kawe Apartment Limited versus Exim Bank Limited***". The 2nd applicant herein above, "***National Furnishers Limited***", was not a party thereof. She was just added in the present Application for leave.

I find the arguments by the respondent's counsel to be correct. I note that "case names" is an important element of any dispute filed in a particular Court. It identifies the parties involved in a disputed and their role in the proceedings. It also identify the proceedings related to the case. The applicants are fighting to be heard at the appellate Court. It should be clearly understood that, the names appearing in the former case should be the same as those to be involved in the intended appeal. Adding another person at this stage creates a new case which is distinct from the previous one, vide Land Case No. 146 of 2020. This will also create confusion on Court records as records of such created case will be non-existing.

It is therefore, obvious that, the 2nd applicant is a stranger to the previous proceedings. She cannot therefore be part of an Application for the intended appeal, in absence of the Court's order. This position is settled in a number of authorities, including the case of **Salim Amour Diwan**

versus The Vice Chancellor Nelson Mandela African Institution of Science and Technology and Another, (supra).

The Counsel for Applicant argued that it is Court's error that the Ruling and Drawn Order do not list the 2nd applicant as a party to the suit. If this is the case then the Counsel for applicants should have pursued a proper procedure to rectify such omission and correct such errors found in Ruling and Drawn Orders. As certainly there is no law that gives parties a scope to correct the Court's errors as they deem fit and whenever they wish to do so. The applicants should applied for the record to be set clear first before filing their Application.

For these reasons, I find the objection to have merits and sustain it accordingly.

Consequently, the Application is struck out with costs.

Ordered accordingly.




T. N. MWENEGOHA
JUDGE
28/07/2023