

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

MISC.COMMERCIAL APPLICATION NO. 80 OF 2021
(Arising from Commercial Case No. 44 of 2021)

BETWEEN

FIRST ASSURANCE COMPANY LTD.....APPLICANT

VERSUS

NTOKA COMPANY LIMITED.....RESPONDENT

Last Order: 18/08/2021
Ruling: 10/09/2021

RULING

NANGELA, J.,

This is an *ex parte* third-party application, made under Order 1 rule 14 (1) (2) and (23) of the Civil Procedure Code, Cap 33 R.E 2019. It originates from Commercial Case No. 44 of 2021 in which the Applicant and the Respondent stand as a co-defendant. The Applicant is seeking the leave of this Court to present and issue a third-party notice against the Respondent.

In the main case, Commercial Case No. 44 of 2021, the Plaintiff therein (**PLASCO LIMITED**), a company incorporated under the laws of Tanzania, is jointly and severally suing the Applicant (as the 2nd Defendant) and Respondent (as the 1st Defendant), and has prayed for the following orders and reliefs from this court;

1. That this Honourable Court to declare that the failure by the Defendants to settle the outstanding amount as required by the Credit Agreements and Bond Gurantee was a breach of Agreement.
2. That this Honourable Court Orders Defendant jointly and severally to pay the Plaintiff the payment of **TZS. 95,000,000/-** being an outstanding amount from the goods supplied to the 1st Defendant.
3. This Honourable Court orders jointly and severally to the Defendants the payment of the interest at the commercial rate on the principal amount claimed as from January 2020 to the date of judgment of this case.
4. This honourable Court orders jointly and severally to the Defendants the payment of interest on the Decretal amount at the rate of 7% per annum from the date of the Judgment till the date of full and final satisfaction of the Decree.
5. General damages as shall be assessed by the Court.
6. Costs of this suit
7. Any other relief(s) the Court deems fit and just to grant.

Before the matter proceeded further, the Applicant filed this *ex parte* chamber Application on the 22nd June 2021. The same was filed by the way of chamber summons

supported by an affidavit of one, Regina Herman the Applicant's Advocate. In the chamber application the Applicant seeks for the following orders:

1. The Applicant be granted leave upon which to present and issue a third-party notice against the Respondent herein who is Co-defendant in the main suit No. 44 of 2021
2. Costs of this application be cost in cause
3. Any relief and or direction the Courts shall deem fit to grant

When this application was called on for its hearing before me on 18th August 2021, Miss Regina Herman learned counsel for the Applicant, appeared and, submitting in support of the prayers sought; Miss Herman adopted the contents of her supporting affidavit as forming part of her submission.

She submitted that, this Court should be pleased to grant the prayers sought because the Applicant has no direct obligation to the main case, i.e., the Commercial Case No. 44 of 2021, and that, is even a stranger to the case.

Having carefully considered the submission made by the learned counsel for the Applicant, and having looked at the chamber summons and its accompanying affidavit, I note, as once observed in the case of **Shiraz Pyrali Walji**

vs ZamZam Oil Company Ltd and 5 others, Misc. Comm. Appl. No. 3of 2020 (unreported), that, principally, in any *ex parte* application, the Applicant must disclose, to the fullest possible extent, all material facts known to him/her, without any attempt to intentionally mislead the Court or intentionally starve it of the truth.

As I noted herein, this Application was brought under Order 1 Rule 14 (1) (2) and (23) of the Civil Procedure Code, Cap 33 [R.E 2019]. This Order provides a procedure that need to be followed when one is seeking for leave of this Court to allow him/her filed a third-party application to join to the main suit as third-party who is co-defendant.

Before determining whether a Court should grant or refuse an application for leave to file a third-party Notice, it is trite law, that, the Applicant has to establish, on face of the record of the pleadings, and upon his supporting affidavit, that, he is entitled to contribution or indemnity from that third-party, in respect of the amount which the Plaintiff in the main suit claims in the event that the claim is successful.

Upon reading the pleadings and on the basis of the submission made before this Court, I find that, the basis of seeking to join Respondent as third-party to the main case which is pending before this Court, is the fact that, as the insurer of the Loan, the applicant has no direct agreement with the Plaintiff in the main suit.

In the upshot, I am satisfied that, the Applicant has exhibited, in the face of record of their pleadings, and, upon her supporting affidavit, that, there are sufficient grounds entitling her to seek indemnification from the intended third party who is also a co-defendant.

All said and done, this Court finds it reasonable and proper to grant leave to the Applicant/ 2nd Defendant to present a Third-Party Notice to the Respondent/1st defendant. This ex-parte application is therefore hereby granted. I make no orders as to costs.

It is so ordered.

DATED AT DAR-ES-SALAAM ON THIS 10TH SEPTEMBER 2021



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DEO JOHN NANGELA
JUDGE