

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

MISC. LAND APPLICATION NO. 754 OF 2023

(Arising From Land Case No. 335 of 2023, Land Division)

HAMZA B. BYARUSHENGO.....APPLICANT

VERSUS

MWANGA HAKIKA BANK LIMITED.....RESPONDENT

RULING

21/03/2024 to 17/04/2024

E.B. LUVANDA, J

This application is made under the enabling provisions of Order 1 rule 14(1)(b) of the Civil Procedure Code, Cap 33 R.E. 2019. Basically, the Applicant above is craving for the Court to grant leave to the Applicant to present a third-party notice against the Respondent.

In the affidavit in support, the Applicant grounded that his claim against the Respondent (the Third Party) and its relation to the Plaintiff's claim against him are precise contained in paragraph two of the written statement of defence, that his failure to hand over the residential licence to the Plaintiff, liability if any, stands to be taken by the Third Party who refused to hand over to him so that he could handover to the Plaintiff.

In the counter affidavit, the Respondent stated that the Applicant has a knowledge that there is pending case at the Court of Appeal in respect of Land Case No. 45 f 2019, still he volunteered to sale the subject matter of the appeal for purpose of benefiting out of his own wrong doing. She stated that the Applicant is playing games as he sold the suit property while there is a case pending at the Court of Appeal.

Mr. Ashiru Hussein Lugwisa learned Counsel for Applicant submitted in a nutshell that under the circumstances where the Bank still holds the Applicant's residential licence unlawfully and also the fact that the Plaintiff in the main suit has a claim against the Applicant relating to the same residential licence, argued allowing this application to join the Bank as third party to answer to those claims is inevitable.

Mr. Stephen Mayombo learned Counsel for Respondent, in reply submitted that there is already exist court decision over the same indemnity or relief which the Plaintiff is claiming against the Defendant who is the Applicant herein. He submitted that the said suit is pending at the Court of Appeal. He submitted that in the previous suit the Court declared the Respondent's withholding of the said residential licence is unlawful and ordered the same to be released forthwith. He submitted that the Applicant is claiming against

the Respondent (Third Party) same relief or indemnity from the Plaintiff, it is already been determined in Land Case No. 45 of 2019. He submitted that the Applicant intentionally and negligently sold the suit premises to the Plaintiff in the main case knowing there is a pending appeal in the Court of Appeal, citing annexure HBB-2 to the affidavit specifically clause C of that sale agreement, where the Applicant acknowledges that the residential licence is currently not under his custody, but proceeded to sale the same. According to Order 1 rule 14(1)(b) of Cap 33 (supra) which was cited as enabling provision for purpose of this application, provides,

'(1) Where in any suit a defendant claims against any person not a party to the suit (hereinafter referred to as "the third party")-

(a) ...N.A...

(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'

The Respondent do not dispel a fact that the relief claimed by the Applicant against the Respondent are relating to or connected with the subject matter of the suit and substantially the same as a relief or remedy claimed by the

Ptaintiff. Rather her argument is that the said relief was adjudged by this Court in Land Case No.45 of 2019 and there is a pending appeal before the Court of Appeal. In so far annexure HBB-2 to the affidavit disclosed the same fact, I rule that this question is reserved will be determined in future for it to be determined once and for all. My undertaking is grounded on a fact that this stage is ordinarily *ex parte*, see Order 14 rule 2, Cap 33 (supra) and the Respondent will have a chance to make her defence under Order 1 rule 17 of Cap 33 (supra).

For that matter, I am making an order granting leave for the Applicant to present a third party notice against the Respondent with a direction that the same to be filed within eight days counting from the date hereof. It is made under sub rule 4 of rule 14 to Order I, Cap 33 (supra)

The Application is granted. No order to costs.



E. B. LUVANDA
JUDGE
17/04/2024

Ruling delivered in the presence of Mr. Ashiru Hussein Lugwisa learned Counsel for Applicant, also holding brief for Mr. Cleophas James learned Advocate for the Respondent.



E. B. LUVANDA
JUDGE
17/04/2024