

TANZANIA / JUDGMENT

MISC

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1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA ARUSHA SUB REGISTRY AT
ARUSHA MISC. CIVIL APPLICATION NO. 12342 OF 2024 (Arising from Civil Case No. 50 of 2023)
LODHIA STEEL INDUSTRIES LIMITED..... APPLICANT VERSUS
METICULOUS GENERAL INSURANCE COMPANY
LTD..... 1stRESPONDENT LEOPARD
TOURS LIMITED..... 2ndRESPONDENT MOHAMED
ABDALLAH MBUGU ©Abdallah Mohamed Kiure ©Abdallah Mohammed
Mbugu)..... 3rdRESPONDENT

RULING

21st August & 16th October 2024 Masara, J This Application has been preferred by the Applicant under the provisions of Order I Rule 14(a) & (b), Rule 14(2)(a), (b) and (c), Rule 14(3) and section 95 of the Civil Procedure Code, Cap. 33 [R.E. 2019]. The Applicant seeks leave of this Court to enable it to present a third-party notice to Meticulous General Insurance Company Ltd. as a co-defendant in Civil Case No. 50 of 2023 pending in this Court between the Applicant and the 2nd and 3rd Respondent herein. 1 | Page The Applicant's Application is supported by an affidavit deposed by Sailesh Nathalal Pandit, the Principal Officer of the Applicant. In the said affidavit, it is averred that a third-party notice against the 1st Respondent herein is craved in order to cover the Applicant against any relief or remedy relating to or connected with the 2nd Respondent's claims in Civil Case No. 50 of 2023 in which the Applicant is vicariously sued for specific damages amounting to TZS 1,753,812,535.00/= arising from an alleged reckless driving by the 3rd Respondent, an employee of the Applicant. The Applicant further states that, he is the lawful owner of the motor vehicle with registration number T887AHA, Mitsubishi Fusso, which was being driven by the 3rd Respondent which vehicle was involved in a fatal accident on 16/06/2023, there fatally damaging motor vehicle with registration number 420 BZU, make Toyota Land Cruiser the property of the 2nd Respondent herein. That, the Applicant's claim against the 1st Respondent is for indemnity and contribution since the motor vehicle involved in the accident was insured by the 1st Respondent and had a valid insurance policy at the time of the said accident. The Applicant further claims that, it has a bonafide claim against the 1st Respondent herein substantially and connected to the claims in Civil Case 2 | Page No. 50 of 2023 made by the Plaintiff (2nd Respondent) in the said suit. That, the Application herein is merited and ought to be granted for the interest of justice. At the hearing of the application, the Applicant was dully

represented by Mr Rajabu Bakari, learned advocate. As is the norm with this type of applications, the same proceeded ex parte against the Respondents. Submitting in support of the Application, Mr Bakari sought to adopt as part of his submissions the averments made in the Chamber Summons and the Affidavit attested by the Applicant's Principal Officer. Mr Bakari reiterated that, the Application is premised on the fact that the 1st Respondent is the insurer of the Motor Vehicle No. T887AHA, Mitsubishi Fusso, which was involved in an accident on 16th June 2023 at Kikatiti Area. That, the 3rd Respondent, who was the driver of the said vehicle was an employee of the Applicant and was on duty at the time. That, the accident involved the 2nd Respondent's vehicle above stated. Consequently, the 2nd Respondent filed Civil Case No. 50 of 2023 against both the Applicant and the 3rd Respondent herein. Mr Baraka added that, the Applicant has the right to claim indemnity from the 1st Respondent herein in case of any adjudged claims against it. That, in case the Plaintiff succeeds in Civil Case No. 50 of 2023 against the 3 1 Page Applicant, the 1st Respondent should pay the compensation adjudged against the Applicant. Basing on the above submissions, the Applicant prays that the Court grants leave to it so that the 1st Respondent is served with a third-party notice it becomes one of the Defendants in Civil Case No. 50 of 2023. To buttress his position, reference was made to the case of January Mshimba vs the Registered Trustees of Daughters of Mary Immaculate and Collaborators, Civil Appeal No. 127 of 2018 where the Court of Appeal decided that an applicant for a third-party notice need not file a fresh suit in order to establish entitlement to contribution from a third party. From the cited case, Mr Bakari is of the view that, as the 1st Respondent is the insurer of the Applicants' motor- vehicle, leave is necessary to enable the Applicant to serve a third-party notice. Having considered this Application and given the nature of the main suit (Civil Case No. 50 of 2023) which was filed by the 2nd Respondent against the Applicant and the 3rd Respondent, this Court is of the view that, from the evidence on record, particularly Annex LSIL 1 to the Applicant's affidavit, there exists a suit, that is Civil Case No. 50 of 2023, to which the 1st Respondent is not a party. 4 | Page As per annexure LSIL-4 to the Applicant's affidavit, it is also evident that there exists an indemnity contract between the Applicant and the 1st Respondent, in relation to the motor vehicle owned by the Applicant which was involved in an accident as the same was at the time insured by the 1st Respondent. This is the vehicle claimed to have caused damages as per the Plaint annexed to the Affidavit in support of this Application, marked annexure LSIL-1. From the above exposition, the Applicant has managed to establish the necessary proof for a grant of the relief requested. That is, the 1st Respondent is not a party to the main case and that the Applicant has claim against the 1st Respondent that is substantially the same and or connected with the Plaintiff's claim in the main suit. Further, the Applicant has also established that he has an indemnity claim against the 1st Respondent. Since the Applicant's claims have been justified before this Court, it is befitting and it is for the interest of justice to allow the prayers made by the Applicant. This will also be in accordance with the resolve to avoid multiplication of cases before the Court. Accordingly, this Application is granted. The Applicant is given 14 days within which to file the craved third-party notice. 5 | Page It is so ordered. DATED and DELIVERED at ARUSHA this 16th day of October 2024 Y.B. Masara JUDGE 6 | Page

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