



**IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA FIRST
INSTANCE DIVISION**

*(Coram: Charles Nyawello, DPJ; Richard Muhumuza and Richard Wabwire
Wejuli, JJ)*



APPLICATION No.15 OF 2021
(Arising from Reference No. 29 of 2021)

**THE SECRETARY GENERAL OF THE EAST
AFRICAN COMMUNITY APPLICANT**

VERSUS

CONSOLATRICE UWEZEYIMANA RESPONDENT

28th NOVEMBER 2022

RULING OF THE COURT

A. INTRODUCTION

1. This Application arises from Reference No. 29 of 2021 filed by the Respondent against the Applicant. The Applicant seeks to be granted leave to join KCB BANK TANZANIA LIMITED (KCB) as a third party to the proceedings between the Applicant and the Respondent in the Reference. This is premised on the grounds that the death benefits claimed in the Reference, by the Respondent, were paid to the estate of the deceased through KCB. The Applicant also seeks leave to be granted to serve all copies of the pleadings in Reference No. 29 of 2021 upon KCB, and further that the costs of and incidental to this Application be paid by the said intended third party.
2. The Application was brought under Article 30 of the Treaty for the Establishment of the East African Community (“the Treaty”) and Rules 52(1), (2), & (4), 53(1) and 55 of the East African Court of Justice Rules 2019 (“the Rules”).

B. REPRESENTATION

3. The Respondent was co-represented by Counsel Prof. John Ruhangisa and Counsel Michael Lugaiya while Counsel Denis Kibirige represented the Applicant.

C. BACKGROUND

4. Briefly, the background to the Application is that the Respondent filed **Reference No. 21 of 2019** seeking to recover, among others, death benefits due to her late husband, Alain Nsengiyumva Onesphore, who was an employee of the Applicant.



5. The late Alain Nsengiyumva Onesphore's death benefits were paid through KCB which, it is alleged, deducted from the death benefits outstanding loan amounts allegedly owed by the deceased to the Bank.
6. At the hearing of the Application, Counsel for the Applicant sought and was, with consent of the Respondent's Counsel and Counsel for the intended third party, granted leave under Rule 51 of the Rules to amend the misnomer of parties in the pleadings. The parties had been interchangeably referred to as Applicant and Respondent. The correction is therefore reflected in this Ruling and on the Record notwithstanding that the Applicant undertook to file corrected versions of the pleadings, but has regrettably hitherto not done so.

D. THE APPLICANT'S CASE

7. The Applicant's case is stated in the Affidavit in support of the Application.
8. It is the Applicant's case that KCB opened and maintained an Account in the name of the late Alain Nsengiyumva Onesphore, a former employee of the Applicant and husband of the Respondent herein, into which the deceased's salary and benefits were paid. That the Applicant through their insurer with whom the Applicant held a Group Life Assurance scheme for its employees, processed the deceased's death benefits. That upon receipt of the said death benefits from the insurance company, the Applicant remitted the money to the deceased's said account held with KCB, Arusha Branch.
9. That the Bank drew the Applicant's attention to the fact that at the time of his death, the deceased had an outstanding loan balance of US\$ 96,954.39 which they proceeded to withhold from the benefits.



10. That the decision to withhold that portion of the death benefits was the Bank's decision and not that of the Applicant and that he did not instruct the Bank to do so. For that matter, the Respondent seeks to have KCB joined as a third party to the Claim.
11. That if the bank is joined as a third party, the Court will be able to establish the role of the Applicant in processing and depositing the death benefits of the deceased into the deceased's estate and conclusively determine **Reference No. 29 of 2021** and further that if the Application is granted, the Applicant would be saved from being condemned for a matter he had already dealt with.
12. The Applicant seeks the following orders, that:
 - a) leave be granted to join KCB as a third party to the proceedings between the Applicant and the Respondent in **Reference No 29 of 2021** as the party through which the death benefits claimed by the Respondent were paid to the estate of the deceased;
 - b) the Applicant be granted leave to serve all copies of their pleadings in **Reference No. 29 of 2021** to the third party; and
 - c) the costs of and incidental to this Application be paid by the said third party.

E. THE RESPONDENT'S CASE

13. The Respondent is the widow of the late Alain Nsengiyumva Onesphore, a former employee of the Applicant. She filed **Reference No. 29 of 2021** from which the Application arises, against the Secretary General of the East African Community, seeking, among others, the payment of her late husband's death benefits. In this Application



however, the Respondent did not file a Reply to the Application because they are not required to be a party to these proceedings.

F. INTENDED THIRD PARTY (KCB)'S CASE

14. In an Affidavit in reply contesting the Application and in submissions by Counsel for KCB, the Bank contended that KCB and the Applicant, together resolved to deduct the outstanding loan balance from the benefits remitted by the insurer.

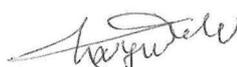
15. That all the funds in the deceased's account were transferred to the Respondents' account and the account was closed thereafter and that the Applicant can prove his case without having to join the Bank as third party to the proceedings.

G. ISSUES

16. The sole issue for determination is, Whether KCB can be joined as a third party in **Reference No. 29 of 2021**.

H. DETERMINATION OF ISSUE BY COURT

17. In arguing their respective cases, Counsel for either party laid emphasis on proving that each had played their respective roles rightly. On the part of the Applicant, by ensuring that upon receipt of the deceased's benefits, they were transferred to his account with KCB and that after this they did not play any role regarding how the money was disbursed. Counsel for the Applicant submitted that the purpose of the application was to join KCB as a Respondent in the Reference because after the Applicant deposited the money on the account with KCB, it ceased to have control over how it was accessed, how the deductions were made and that therefore KCB ought to be joined as a party so that it can provide Court with information relating to how this money was



accessed and utilized. That the purpose of the third party notice was to enable Court to conclusively determine the matter.

18. Both Counsel acknowledged that this was a maiden genre of application before Court, that it was the first application of its nature under Rule 55, a possible test case. The Applicant therefore sought to rely on various persuasive cases for lack of binding precedents. He cited the cases of **Houses and Homes Limited and Others vs Jitesh Jayantilal Ladwa Misc. Commercial Application No. 19 of 2021** and **that of Kenya Union of Commercial, Food Allied Workers Limited vs Gikanda Farmers' Co-operative Society Limited & Another, Cause No. E006 of 2020** to support the contention that it was necessary to include KCB in order to determine the matter with finality instead of filing a new case, in the event that the Reference was decided in their favour.

19. In reply, Counsel for the Respondent contended that under Rule 55(3), the Application for leave to issue third party notice should have been *ex parte* between the Applicant and possibly the intended third party that the Respondent was therefore in Court by default.

20. Whereas Counsel for the Applicant rightly stated the principles of law and the grounds that would justify issuance of a third party notice and Counsel for the Bank articulated reasons why there was no justification for the bank to be included as a third party to the Reference, the question that we set out to address upfront is whether KCB can be a third party in proceedings before this Court. This touches on interrogation of the jurisdiction of this Court over the parties.

21. Rule 55 of the Rules, upon which the Applicant seeks to rely to have KCB issued with a third party notice, mandates a Respondent who claims against any other person not already a party to the claim or



reference to, with leave of Court, issue third party notice stating the nature and grounds of the Claim or Reference.

22. However, Article 30 of the Treaty limits the ambit of the Courts jurisdiction *in personam* to adjudication of cases against Partner States of the Community or Institutions of the Community. Anyone residing within a Partner State can bring action against a Partner State or Institution of the Community.
23. The second line of delineation also limits the Court's mandate to determination of a defined scope of disputes between the Community and its employees; namely, disputes arising out of the terms and conditions of employment of the employees.
24. The framers of the Treaty therefore intentionally defined entities over which the Court would have *jurisdiction in personam*. Whereas Article 9 of the Treaty designates the institutions of the Community, Article 30 of the Treaty stipulates that only a person resident within a Partner State can bring action against a Partner State and any one of the Institutions of the Community. These are the institutions designated as such under Article 9 of the Treaty.
25. It is trite law that a Court must have jurisdiction over all the parties appearing before it in order to effectually render justice. Otherwise, proceedings and any ensuing orders emanating from proceedings in want of jurisdiction amount to naught and would therefore be unenforceable.
26. A third party notice is a precursor to transferring or sharing liability, by a Respondent who applies for a third party notice, with the party upon whom such notice is issued. A Respondent who applies to have a third-party notice is basically saying that the third party is wholly or partially



liable, or a contributant to the claim against him. That should the Respondent be found liable, then the third party should shield him wholly or partially by taking some of the blame. In effect therefore, once a third-party notice is served and the party is added as such, he instantly becomes a litigant in that matter. The Court which entertains and hears a matter in which a third party is participating adjudicates over the possible liability of this third party and consequently any orders of the Court granted should be enforceable for or against such third party. In which case therefore, the Court must have jurisdiction over, not only the matter before it but also over the parties, that is to say jurisdiction *ratione personae*. This is so, in order that such orders must be enforceable against the party whom they are issued, so that the Court's orders are not issued in futility.

27. Jurisdiction *ratione personae* speaks to who can appear before the Court as a party.

28. After the parties established that this Court had the mandate to entertain and determine applications for third party notice under Rule 55, a pivotal question ought to have been an inquiry into the respective *locus standi* of the parties to determine whether the Court had jurisdiction over them.

29. Having carefully considered the provisions of Articles 9 and 27 of the Treaty, we are of the firm view that the possible third party envisaged under Rule 55 is one over whom, potentially, the Court would have jurisdiction as stipulated under the provisions of Articles 9, 27, 30 and 31 of the Treaty.

30. KCB cannot possibly be a party because it is neither an Institution of the Community as listed under Article 9 nor has it been, subsequent to enactment of the Treaty, designated as such. From the pleadings and



evidence on file, it can be discerned that KCB is a limited corporate financial institution.

31. We are emboldened by the decision of this Court in the case of **The Attorney General of the United Republic of Tanzania vs Anthony Calist Komu, EACJ Appeal No. 2 of 2015** in which it was stated that lack of *ratione personae* will arise where one of the parties is devoid of the requisite capacity or *locus standi*-to appear before a Court.

32. We further note that, whereas KCB was unduly dragged into the proceedings, the Respondent as well ought not to have been in Court. It ought to have been an *ex parte* Application as stipulated by the Rule 55(2). We are of the view that this Application was misconceived and is an unmitigated case for award of costs against the vanquished party. We also take direction from Rule 127 of the Rules which provides that, except for good reasons, costs in any proceedings shall follow the event.

I. CONCLUSION AND ORDERS

33. We find that this Court has no jurisdiction *in personam* over KCB, against whom an application for third party notice has been sought.

34. In the event, Application No.15 of 2021 fails and is accordingly dismissed.

35. The Applicant is condemned to the costs of the Application.

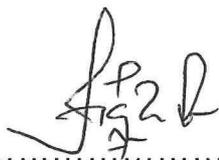
36. It is so ordered.



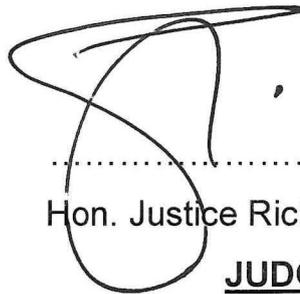
Dated, signed and delivered at Kampala this 28th Day of November, 2022.



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Hon. Justice Dr. Charles Nyawello
DEPUTY PRINCIPAL JUDGE



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Hon. Justice Richard Muhumuza
JUDGE



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Hon. Justice Richard W. Wejuli
JUDGE

