

**IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM.**

**MISC. COMMERCIAL APPLICATION NO. 109 OF 2022.**

**SHARIFA ALLY YUSUPH.....APPLICANT.**

**VERSUS**

**BANK OF BARODA  
(TANZANIA) LIMITED.....1<sup>st</sup>RESPONDENT.**

**KIZIMBANI GYPSUM & MINING  
PROSPECTOR LIMITED.....2<sup>nd</sup> RESPONDENT.**

**MOHAMED SAID MOHAMED.....3<sup>rd</sup> RESPONDENT.**

**ABDULAZIZSAIDMOHAMED.....4<sup>th</sup> RESPONDENT.**

**SHABAN MOHAMED .....5<sup>TH</sup> RESPONDENT.**

**DELTA VILILO MAFIE .....6<sup>TH</sup> RESPONDENT.**

**RULING.**

Date of last Order: 15/8/022.

Date of Ruling: 30/8/2022.

**MARUMA, J.**

This application is brought by way of Chamber Summons under Order 1 Rule 1 of the Civil Procedure Code [Cap.33 RE 2019] in which the Applicant requests to join as an interested party in the

Commercial Case No. 106 of 2021 which is now ongoing before this honorable court.

The hearing of this application was set for 5<sup>th</sup> July 2022, and on that date, advocate Frank Michael appeared for the Applicant and advocate Damas Sixtus appeared with instruction to hold brief for advocate Mathias Charles for the 1st Respondent. The 2<sup>nd</sup> to 6<sup>th</sup> Respondents did not enter non-appearance. Under the direction of Advocate Mathias Charles, Advocate Damas made his appearance. He asked for a postponement, giving the reason that Mr. Mathias got an emergency and he is on safari. Advocate Frank opposed to the prayer and provided documentation demonstrating that all respondents had received proper service. Mr. Frank requested that the matter be heard ex parte with under rules 46 (2) (b) and (d) of the High Court (Commercial Division Procedure) Rules of 2012, and the Court agreed.

In support of the application Mr. Frank for the Applicant adopted the affidavit and prayed the same to form part of his submission. He submitted that, the application has been brought under Order 1 Rule of the CPC Cap, 33 of the CPC by the Applicant,

a daughter of the deceased one, Ally Yusuph Suleiman who died on 5<sup>th</sup> December 2019 to be joined as an interested party. He went on to submit that during the life time of the deceased, he was married to the 6<sup>th</sup> Respondent and acquired some of the properties. Among them was Plot No. 1 block 25 A with certificate title No. 117935 T. No. 36003. The Applicant was appointed as an administrator and, in the course of the administration, she found that the house was under the loan taken by the 2<sup>nd</sup> Respondent and mortgaged the deceased property as a third - party mortgage. Also, she found that there is a case in court instituted by the 1<sup>st</sup> Respondent against the 2<sup>nd</sup> – 6<sup>th</sup> respondents in Commercial Case No.106 of 2021. Thus, the Applicant prayed to be joined as an interested party as the house was under the matrimonial property of the deceased, who was the 6<sup>th</sup> Respondent and did obtain the spouse's consent of another person, Khalfan Yusuph and not of the deceased. He submitted that the said spouse was never married to the 6<sup>th</sup> Respondent. Therefore, the 1<sup>st</sup> Respondent did not conduct due diligence over the said matrimonial property. So, they prayed the prayer under the chamber summons be granted so to determine the right of the deceased.

Having perused the affidavit in support of the application and the record, I observed that there are substantial issues which need to be addressed by the 3<sup>rd</sup> party, who is the administrator of the estate of the late ALLY YUSUPH SULEIMAN, with respect to the property known as Plot No. 1, block 25A Mwananyamala Area No. 117935, T No. 36003 located at Mwananyamala.

Considering the facts contained in the affidavits and the submission made by the counsel for the Applicant. It is for the interest of justice, as it is observed under section 3A of and order 1 rule 1, order XXXII rule I the Civil Procedure Code (supra) also as emphasised in the case of **Abbas Sherally & Another vs Abdul S. H. M Fazalboy**, Civil Application no. 33 of 2002 (Unreported) that,

*"...The right of a party to be heard before the adverse action is taken against such party has been stated and emphasized by the courts in numerous decisions. That is so basic that a decision which is arrived at in violation of it will be nullified, even if the decision would have been reached had the party heard, because the violation is considered to be a breach of natural Justice..."*

On the above positions of the law, I find no reason to object to the prayer made rather than to allow the Applicant to join as a 3<sup>rd</sup> party in Commercial Case No. 106 of 2021. The prayer is granted with no order as to costs.

**Dated at Dar es Salaam** this 30<sup>th</sup> day of August 2022.



A handwritten signature in black ink, appearing to be "Z.A. Maruma".

**Z.A.Maruma.**

**JUDGE**

