

ENELE MA'AFU

v.

OSEA TUQOVU

A

[HIGH COURT, 1996 (Pain J) 9 December]

Civil Jurisdiction

B *Practice: civil- whether a third party notice may be issued by a defendant to summary proceedings for possession of land. Land Transfer Act (Cap. 131) Section 169; High Court Rules 1988 Order 16 r 1 (1) (c).*

C The Defendant to summary proceedings for possession of land brought pursuant to Section 169 of the Land Transfer Act applied for leave to issue a third party notice. The High Court HELD: that since the special jurisdiction conferred on the High Court by Part XXIV of the Act makes no provision for the filing of a notice of intention to defend the third party provisions in the High Court Rules have no application to the Section 169 procedure.

Case cited:

D *Aiden Shipping Co. Limited v Interbulk Ltd., The Vimeira* [1985] 3 All ER 641

Interlocutory application in the High Court.

V. Maharaj for Plaintiff

E

A. Seru for Defendant

Pain J:

F The Plaintiff has issued a summons against the defendant under Section 169 of the Land Transfer Act requiring the defendant to show cause why he should not give possession of land to the plaintiff. The defendant is the former owner of the land. The plaintiff purchased the land at a mortgagee's sale and is now the registered proprietor of the land.

The defendant has filed an affidavit in reply alleging that the mortgagee acted in collusion with the plaintiff and that the sale and transfer to the plaintiff were fraudulent.

G The defendant has now applied pursuant to Order 16 rule 1 (1) (c) of the High Court Rules 1988 for leave to add the mortgagee (The Housing Authority) as a Third Party to the application under Section 169 of the Land Transfer Act.

In my view a summons to show cause under Section 169 of the Land Transfer Act is not amenable to third party procedure under Order 16 rule 1. In terms of the rule, a third party notice can only be issued by a defendant who has given notice of intention to defend. A notice of intention to defend is a specific pleading

defined in Order 1 rule 2 as containing an acknowledgment of service and statement that the defendant intends to contest the proceedings. In terms of Order 12 it is required to be given in an action begun by writ or originating summons. It has a prescribed form to be found in Form 2 of Appendix 1 to the Rules.

A

Such a notice of intention to defend has not been given by the Defendant and is not appropriate in the present case. In terms of the Rules, it is only applicable to proceedings commenced by writ or originating summons. The rules do not contain any provision for a notice of intention to defend to be given in respect of a summons under Section 169 of the Land Transfer Act. Therefore Order 16 rule 1 does not apply. The Court does not have jurisdiction to issue a third party notice in this case.

B

A similar situation was recognised in Aiden Shipping Co. Limited v Interbulk Ltd., The Vimeira [1985] 3 All ER 641 in proceedings that involved separate applications between a vessel owner and a charterer and the charterer and a sub charterer. The Court of Appeal described the relationship between the owner and the sub charterer as the "classic third party situation" but in determining whether that relationship could exist said (at page 646):

C

"But a problem is posed by the words notice of intention to defend. This is a term of art defined by RSC Ord.1, r 4 as meaning an acknowledgment of service containing a statement to the effect that the person by whom or on whose behalf it is signed intends to contest the proceedings to which the acknowledgement relates.

D

In proceedings begun by originating motion, the rules make no provision for an acknowledgement of service containing such a statement and none was signed. It is therefore quite impossible to treat the sub-charterers as third parties within the meaning of Ord.16

E

The decision on the application between the vessel owner and the charterer was subsequently reversed in the House of Lords [1986] 1 AC 965 but it was noted, without further comment, that the Court of Appeal judgment pointed out that this was a classic "third party" situation but RSC Order 16 did not apply to an originating motion.

F

I hold that Order 16 rule 1 of the High Court Rules does not apply to a summons issued under Section 169 of the Land Transfer Act. Therefore the defendant in this case cannot issue a third party notice against the Housing Authority. This of course, does not prevent the defendant from commencing separate proceedings against the plaintiff and the Housing Authority if this is thought appropriate.

G

The defendant's application for leave to issue a third party notice is refused.

(Application dismissed.)