

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**MISCELLANEOUS COMMERCIAL APPLICATION NO. 161 OF 2021**

**BETWEEN**

**AFRINEXT LIMITED.....1<sup>st</sup> APPLICANT**

**CHANDRESH BAVADIYA.....2<sup>nd</sup> APPLICANT**

**ANNA KAISA KAHKOLA.....3<sup>rd</sup> APPLICANT**

**Versus**

**PETRA LARSON.....1<sup>st</sup> RESPONDENT**

**JABARI INVESTMENT LIMITED.....2<sup>nd</sup> RESPONDENT**

Date of Last order: 1<sup>st</sup> November, 2021

Date of Ruling: 1<sup>st</sup> November, 2021

**RULING**

**MKEHA, J.**

In this application, the applicants are moving the court to be allowed filing additional list of documents to be relied upon by the applicants themselves, who are the defendants in Commercial Case No. 78 of 2020.

The application is being made after closure of the plaintiff`s case to which the applicants/defendants had no objection.

The application is made under Order XIII Rule 2 and section 95 of the Civil Procedure Code. Mr. Mbagwa learned advocate represented the applicants. On the other hand, Mr. Nangi learned advocate represented the respondents

Mr. Mbagwa learned advocate commenced his submissions by adopting contents of the affidavit of one Chandresh Bavadiya, that supports the application. He then submitted that, upon going through the applicants` and respondents` witness statements and upon further perusal of the available documentation with regard to the transactions between the parties, it came to the deponent`s knowledge that all the monies that the applicants were supposed to transfer to the respondents were all transferred and paid back to the 1<sup>st</sup> respondent.

In terms of paragraph 11 of the affidavit supporting the application, such payments were made through cash payments, mobile money transfers and bank deposits. Copies of the Bank slips, Mobile money transfers electronic receipts, WhatsApp and text message conversations between the applicants and the 1<sup>st</sup> respondent, proving that the said money was paid back to the respondents, are attached to the application as annexure AFX1A. There is no paragraph indicating when

actually, the applicant's got knowledge of the fact that the claimed sum stands paid.

Mr. Nangi learned advocate who did not file a counter affidavit to oppose the application, replied briefly by submitting that, order XIII Rule 2 of the Civil Procedure Code allows parties to bring additional documents only when good cause is shown for non-production of the documents in early stages of the case. In view of the learned advocate for the respondents, no good cause had been shown by the applicants.

It is true that, an application of this kind cannot be refused merely because it is filed in later stages of the case, like it happened in this case when the same was filed some days after closure of the plaintiff's case. However, for the applicant to succeed the said evidence should not have been previously known to the applicant or it should be, that which could not be produced despite due diligence. Are the facts of the present application of that kind?

The affidavit supporting the application is silent as to when the documents sought to be added came to be possessed by the applicants. Upon reading the affidavit in totality, one notes that, annexure AFX1A contains matters that happened from September 2019 to July 2020 before Commercial Case No. 78 of 2020 was set for first pre-trial

conference. I thus agree with Mr. Nangi learned advocate that no good cause has been explained by the applicants in terms of Order XIII Rule 2 of the Civil Procedure Code. The application stands dismissed with costs.

Dated at DAR ES SALAAM this 1<sup>st</sup> day of November, 2021



  
**C.P MKEHA**

**JUDGE**

**1/11/2021**

**Court:** Ruling is delivered in the presence of the parties' advocates this 1<sup>st</sup> day of November, 2021.

  
**C.P. MKEHA**

**JUDGE**

**1/11/2021**