

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL APPLICATION NO. 162 OF 2021

BETWEEN

AFRINEXT LIMITED.....1st APPLICANT

CHANDRESH BAVADIYA.....2nd APPLICANT

ANNA KAISA KAHKOLA.....3rd APPLICANT

Versus

PETRA LARSON.....1st RESPONDENT

JABARI INVESTMENT LIMITED.....2nd RESPONDENT

Date of Last order: 1st November, 2021

Date of Ruling: 1st November, 2021

RULING

MKEHA, J.

In this application, the applicants are moving the court for enlargement of time within which to enable the applicants to file supplementary witness statement in the proceedings of Commercial Case No. 78 of 2020 before hearing of the defendants' case commences. The applicants are defendants in the said Commercial Case. The application

is made under Order VIII Rule 23 and section 95 of the Civil Procedure Code Cap 33 R.E 2019 as well as Rules 50 & 2 (2) of the High Court (Commercial Division) Procedure Rules of 2019. Whereas Mr. Mbagwa learned advocate represented the applicants, Mr. Nangi learned advocate represented the respondents.

Mr. Mbagwa learned advocate commenced his submissions by adopting contents of the affidavit supporting the application. He then proceeded submitting that, when the applicants filed their respective witness statements in compliance of this court`s order dated 14th September, 2021, they were not in possession of the crucial information relating to electronic Transaction of exchange of monetary value between the 2nd applicant and 1st respondent.

According to the learned advocate the transaction indicates satisfaction of financial relationship that have existed between the two. In view of the learned advocate the information is crucial for determination of the main case. The learned advocate cited the case of **MOORVIEW DEVELOPMENT LIMITED & OTHERS VS FIRST ACTIVE PLC (2008) EHC 273** to urge the court hold that additional statements can be filed at any stage on demonstration of good cause.

Mr Nangi learned advocate who did not file a counter affidavit replied briefly that, in terms of Order VIII Rule 23 of the Civil Procedure Code departure from the scheduling order on the filing witness statements could only be justified in the interests of justice. The learned advocate was of the view that, allowing departure at this stage, when the plaintiffs` case stands closed, would introduce a new case. The learned advocate referred to paragraphs 11 and 14 of the applicant`s affidavit to be deviation from the plaintiffs` original pleadings.

There is no denial that, annexure AFX1 that is referred to in paragraph 15 of the applicant`s affidavit was in the applicants` possession even before institution of Commercial Case No. 78 OF 2020. Whereas the applicants` former defence was to the effect that they never entered into the purported investment agreement, the applicants seek to be allowed to change the defence to be that, the claimed sum stands paid. Through the use of evidence which was in their possession when they filed their defence and when they filed their ordinary witness statements.

Annexure AFX1 relates to matters happened between September 2019 and July 2020 some of which are correspondences between them via their mobile phones. Although departure is permissible, it ought to be

allowed upon proving that the applicants were not previously in possession of the new evidence or that, the evidence could not be produced despite due diligence.

I thus refuse the application for want of sufficient cause for departure from the scheduling order. The application is dismissed with costs.

Dated at DAR ES SALAAM this 1st day of November, 2021




C.P MKEHA

JUDGE

1/11/2021

Court: ruling is delivered in the presence of the parties' advocates this 1st day of November, 2021.


C.P. MKEHA

JUDGE

1/11/2021