

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

LAND CASE NO. 65 OF 2015

M/S CIDE COMPANY PLAINTIFF

VERSUS

TANZANIA FOREST

SERVICES (TFS) AGENCY 1ST DEFENDANT

THE HONORABLE ATTORNEY GENERAL ... 2ND DEFENDANT

Date of last Order: 12/2/2020

Date of Ruling: 12/2/2020

R U L I N G

MGONYA, J.

The instant suit was initially filed on 7th November 2018 in this Registry where all parties to this matter were respectively represented.

After the completion of the pleadings, on 4th December 2019, I accordingly conducted the 1st Pre-trial Conference and further referred the case to Mediation for the period of one month from the date of the first session with the Mediator.

When the matter was called before the court on 12th February 2020 before this honorable court, and upon the

attendance of the parties, the Defendants were represented duly by Benson Hosea the learned Counsel while the Plaintiff was absent. It is from the record of the court, it came to my knowledge that the Mediation failed due to the Plaintiff's absence. I quote the Mediator's words as herein below:

"COURT:

When the case was called for Mediation sessions, the Plaintiff never appeared. Hence Mediation was not conducted.

ORDER:

Hearing on 12/2/2020

It was impracticable to conduct mediation session because the Plaintiff failed without good cause to appear. I further advise the provision of Order VII Rule 29(a) of the Civil Procedure Code 1966 be accordingly invoked by the trial judge.

The file is returned to the trial judge for necessary orders.

(Signed)

Mgetta J.

23/12/2019"

It is from the said order, the Defendants' Counsel Mr. Benson Hosea the learned State Attorney prayed to this Honorable court to invoke the provisions of **Order VIII Rule 21 of the Civil Procedure Code (Amendment of the First Schedule GN. No. 381/2019)** and proceed to dismiss the entire suit with cost.

It is from the above divergence submissions, I decided to take up the Defendants' Counsel concern and prayer, make a decision, and come up with this Ruling.

Indeed the **Civil Procedure Code** under **GN. No. 381/2019** has brought the massive and revolutionary amendments to the Civil Litigation System in this Country. The aim being to strengthen the Civil legal procedure according to the rapid social economic development that has occurred recently taking into account the factors of time, expenses and other aspects of life. In the amendment brought under **GN. No. 381/2019**, the purpose and nature of Mediation has been well elaborated under **section 26** of the same. Further under **section 27** attendance to the Mediation has been well elaborated where parties to the Mediation have been recognized as herein below:

"27 (1) The Party or his Advocate or both; where the parties are represented shall be notified of the date of Mediation and shall attend the Mediation session.

(2) Where the third party may be liable to satisfy all or part of a judgment in the suit or to indemnify or reimburse a party for money paid in satisfaction of all or part of a judgment in the suit, the third party or his advocate may also attend the mediation session, unless the court orders otherwise."

On the same vein of making Mediation be conducted in a more accurate way and to reach the goal of Mediation, **section 28** of the same provides Authority to settle where the same provides:

"28 (1) A party to a mediation session shall have authority to settle any matter during the mediation session.

(2) A party who requires the approval of another person before agreeing to a settlement shall, before the mediation session, arrange to have ready means of communication to that other

person throughout the session, whether it takes place during or after regular business hours.”

The above sections have exhaustively made all the ways possible for a party to make use of Mediation as it was intended by the law. In case the Party to the suit can't make it to the Mediation, there are other alternatives provided by the law that can be used to make the Mediation possible and useful to the parties.

The law further provides remedies upon failure of the parties to attend the mediation as well stated under **section 29** of the **GN. No. 381/2019**. The same provides:

"29 Where it is not practicable to conduct a schedule mediation session because a party fails without good cause to attend within the time appointed for the commencement of the session, the mediator shall remit the file to the trial judge or magistrate who may:

(a) Dismiss the suit, if a non-complying party is a plaintiff, or strike out the defence, if the non-complying party as a defendant;

(b) Order a party to pay costs; or

(c) Make any other order he deems just.”

Back to the matter at hand, from the wording of the Mediator, my Brother Mgetta J., and the order emanating there to, the reason of failure to the Mediation on this matter, is the failure of the Plaintiff to attend the Mediation without any good cause that was advanced before the Mediator. Under the circumstances, I wonder as to why the Plaintiff's Counsel have failed to appear before the Mediator on the scheduled date, or even send someone to hold his brief since on the date the court conducted the First Pretrial Conference towards Mediation, the Mediation date was in the knowledge of the Plaintiff's Counsel since he was before the court.

It is my expectation that, by now the Plaintiff's Counsel must have come across and is conversant with the recent amendment of the Civil Procedure Code but he decided to take the matter lightly.

Under the circumstances of this matter and particularly for the stated reason of the Plaintiff's failure to attend mediation sessions, there was quite a wide range of choices to remedy the situation and continue with the mediation as intended by law. In this event, the Counsel for the Plaintiff was expected and in particular after consultation with his client be vested with powers to proceed with the mediation taking into account the rights of

the client as directed. What the counsel was supposed to do is just to inform the Mediator that he has been vested with those powers where the Mediator for record purposes could have noted in the coram. The law **under section 27(1)** clearly states that in mediation, ***the Party or his Advocate or both; where the parties are represented shall be notified of the date of Mediation and shall attend the Mediation session.*** Further, the authority to settle has been derived under **section 28 (1)** and **(2)** clearly that ***a party to a mediation session shall have authority to settle any matter during the mediation session; further a party who requires the approval of another person before agreeing to a settlement shall, before the mediation session, arrange to have ready means of communication to that other person throughout the session, whether it takes place during or after regular business hours.***

From the above legal position of which has relieved and improved the mediation procedures for both parties and the court, should not be taken for granted. Under the circumstances, not only the Counsel for Plaintiff was in position to stand on behalf of the Plaintiff during mediation, but also upon arrangement, another person duly appointed by the Plaintiff could have attended the mediation.

On my part, I take the recent amendments **very seriously** as I do not want to undermine the work that has been done by the Legislature in bringing these amendments of which its main purpose is to focus on the intended results of mediation in litigations to attain the benefits of mediation as intended by the law.

Before I make my decision on the situation, I want to urge the legal practitioners to take these amendments seriously. The amendments are meant to be used not just for fun, but instead we should take the advantage of the same by improving litigations without having flimsy excuses on these serious matters which takes time, energy and brains to try settling the disputes in a modernized way; taking into account the benefits of Mediation as I have tried to itemize a few of these as herein below:

First, is having a **greater control of the matter by the parties versus the court.** Mediation increases the control of the parties over the determination of the matter. Each party is directly involved in negotiating their own agreement and no settlement can be imposed upon them. In comparison, dissatisfaction is often experienced in court where parties have little choice but to accept the **judgment** made, which they may not be happy with.

Second, is **confidentiality to the Parties**. Unlike the potential publicity of court proceedings, everything said at the mediation is entirely confidential to the parties (unless specifically agreed otherwise).

Third, it is **voluntary**. Any party may withdraw at any time of the Mediation, but at least the Mediation could have commence and tried by the parties. In this event, the mediation will be marked failed, not by nonattendance, but for some other reason(s).

Fourth, is **convenience**. The mediation is arranged at a venue convenient to the parties, who each have their own room as well as a separate room for joint meetings. The Mediator listens to everyone's view, talks to the parties privately and together, guiding them towards a settlement.

Fifth, is **reduced cost**. This mostly benefits the parties to the litigation. Generally the cost is greatly reduced in mediation in comparison to full trial in case the mediation fails. So it is good to give it a try, as traditional litigation is very expensive and the total cost is highly unpredictable.

Sixth, is **faster outcome**. Because mediation can be used early in a dispute, an agreement can usually be reached quicker than if pursuing controversial issues through full trial.

Seventh, is **support**. Mediators are trained in working in difficult situations. The Mediator acts as a neutral facilitator and supports each party through the process, unlike in trials.

Eighth, and last is **preservation of relationships**. Whether in business or family disputes, preservation of relationships can be a key benefit of Mediation. Mediation helps participants focus on effectively communicating with each other as opposed to attacking each other.

Above are few benefits that can be observed in Mediation of which I am sure the same were in the mind of the Stakeholders and the Legislature who finally decided to amend the provisions of Mediation and Arbitration Procedure under the Civil Procedure Code of which should never be underestimated or underrated in any way.

All said and done, I take the recent Amendment to the **Civil Procedure Code Cap. 33** very seriously and under the circumstances, I join hands with the Mr. Hosea a learned State Attorney that the instant Suit ought and deserve to be dismissed for the above legal reasoning.

In the event therefore, I have decided to invoke the provisions of **section 29 (a) of the Civil Procedure Code (Amendment of the First Schedule GN. No. 381/2019)** and proceed to **DISMISS THE INSTANT SUIT**, that is **CIVIL CASE**

NO. 200 of 2018 accordingly on account of the Plaintiff's failure to attend the Mediation.

Defendants should have their costs accordingly.

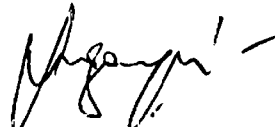
It is so ordered.

Right of Appeal explained.



L. E. MGONYA
JUDGE
12/2/2020

Court: Ruling delivered in chamber in the presence of Mr. Benson Hosea, the learned State Attorney for the Defendants; and Ms. Janet RMA this 12th day of February, 2020.



L. E. MGONYA
JUDGE
12/2/2020