

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO.130 OF 2021

**FAW AFRICA INVESTMENT CO. LTDPETITIONER
*VERSUS***

**GLENRICH TRANSPORTATION
CO. LTDRESPONDENT**

Date of Last Order: 11/06/2020

Date of Ruling: 11/06/2021

R U L I N G

MGONYA, J.

In the cause of hearing of the Application at hand the Counsel for the Petitioner raised an objection to the effect that:

1. The document intended to be admitted be denied for not being an original.

Mr. Hussein Advocate in replying to the submission by the Counsel for the Respondent raised the above objection and submitted that the document intended to be used is not an original document. Further that, the Respondent has no leave of this Court to rely on secondary evidence as **per section 67 of Evidence Act Cap.6 [R. E. 2019]**.

Further, more the objection is to the effect that, the document touches the matter under the Petition itself which

the Petitioner ought to present during hearing of the Petition and not at this particular time.

Replying to the objection, Counsel for the Respondent averred that the document is not a secondary evidence within the meaning of **section 65 of the Evidence Act (supra)** and its submission is not depended **under section 67 of the Evidence Act.**

In the event where it is said that the document is not a secondary evidence, Counsel for the Respondent states that he prays the same be admitted under **section 19 of the Electronic Evidence Act.** The Court was informed that the document is a scanned copy which qualifies to be data message within the meaning **of section 20 of the Electronic Transaction Act, 2015;** as **section 18** of the act that defines what is a data message and that the same is admissible provided that it is in the manner in which their authenticity is guaranteed.

Further, the Counsel for the Respondent avers that, the document be admitted as data message since the same is data message under the provisions of **section 3** of the said law.

Having heard the submission of the learned Counsels in respect to the objection which objects the admission of a document that is said to be a scanned document, it is my view

that the same is governed by **THE ELECTRONIC TRANSACTION ACT, 2015**. The said Act is specific for regulating and governing all forms of electronic transactions. It is then from this law that I will direct myself towards determining the evidence intended to be produced as opposed by the Petitioner's Counsel.

It is the provisions of part IV of **The Electronic Transactions Act, 2015** where the law provides for admissibility of data message. ***Section 3 of the Act*** provides that a data message means "***data generated, communicated, received or stored by electronic, magnetic optical or other means in a Computer system or for transmission from one computer system to another.***"

In the view of electronic evidence, I join hands with the submission by the Counsel for the Respondent that for data message to be admissible it has to attain the status of its authenticity to be guaranteed. The law did not refrain from stating the requirement of the above. It is under the provision of **Section 18 (2) of the Electronic Transaction Act of 2015** which provides:

(2) In determining admissibility and evidential weight of data message on ground that it is a data message.

(a) The reliability of the manner in which the data message was generated, stored or communicated;

(b) The reliability of the manner in which the integrity of the data message was maintained;

(c) The manner in which its originator was identified; and

(d) Any other factor that may be relevant in assessing the weight of the evidence.

The record before this court that the document to be admitted has been pleaded and is in the awareness of the Petitioner.

Having gone through the submission of both parties upon the document that was objected by Counsel for the Applicant which is said to be attached as exhibit RP3; whereby Counsel for the Respondent states that the same is a scanned document that is intended to be admitted and used as proof. In interpretation of the provisions of **section 3 of the Electronic Transaction Act (supra)**, the scanned document intended to be admitted and relied on, forms part of data message as meant in the above said section.

Therefore, the Electronic Transaction Act allows for such document to be admitted and used in its nature of being a data message that originates from an electronic device.

In the event therefore the instant objection is accordingly **overruled.**

It is so ordered.

Each party to bear their own costs.



L. E. MGONYA
JUDGE
11/06/2021

Court: Ruling delivered in chamber in the presence of Mr. Fedrick Massawe, Advocate for the Plaintiff and Ms. Msuya RMA this 11th day of June, 2021.



L. E. MGONYA
JUDGE
11/06/2021