

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA**

CIVIL CASE NO. 12 OF 2015

RASHID WAHI OMARY..... PLAINTIFF

VERSUS

1. MURZAH SOAP DETERGENT LIMITED		...DEFENDANTS
2. OMARY YAHAYA ISSA		

RULING

30/11/2021 & 30/11/2021

MASAJU, J

When the case was called upon for continuation of hearing of the Defence case, today the 30th day of November, 2021 the Court learned of the Document Titled "*TO LIST OF ADDITIONAL DOCUMENTS BE RELIED UPON BY THE THIRD PARTY (made under Order Xiii Rule 2 of the Civil Procedure code Cap 33 R:E 2019)*" filed in the Court Registry by the Third party on the 29th day of November, 2019. So, the Court asked the parties to address the Court on the propriety, if any, of filing the said list intended to read " THE LIST OF ADDITIONAL DOCUMENTS TO BE RELIED UPON BY

THE THIRD PARTY” at this stage of the trial of the case without the leave of the Court.

Ms. Catherine Solomon the learned counsel for the Third Party, submitted that, indeed, she was well informed of the procedure of filing the list in line with Order XIII Rule of the Civil Procedure Code, [Cap 33 RE 2019] and that at this stage of the trial of the case the receipt of such list of documents depended on the Court’s discretion in terms of Order XIII Rule 2 of the Civil Procedure Code, [Cap 33 RE 2019] upon consideration of good cause, if any, by the party seeking the reliance on the said documents in a particular suit. The learned counsel submitted that, she could have first sought the leave of the Court prior to filing the list in the Court, but, the same was filed prior to the Court’s leave in order to avoid delay of hearing of the suit which had been scheduled to last two days on the 29th - 30th days of 2021.

The learned counsel, advised the Court that the documents were being filed in the Court at this stage because they were not knew to the Third Party’s defence, for the same had been referred and alluded to in paragraphs 3 and 4 of the Third Party’s Defence and that the Report which is the subject of the said paragraphs of Defence also makes reference to them as attachment save that by the time the Defence was drawn and filed in the Court on the 14th day September, 2018 the author of the said Report was not in office, so the missing photographs referred to in his Report couldn’t have been obtained by then. That, the third party was therefore not negligent in his delay to file the list of the documents.

The learned counsel, submitted that since the documents sought be relied upon by the third party have been referred to by her in her pleadings in the 3rd and 4th paragraphs, that would amount to good cause, for the Court to receive the said documents at this stage, despite the delay in filing them in Court.

The learned counsel finally prayed the Court to receive the said list of documents intended to be relied upon by the Third Party in her defence pursuant to Order XIII Rule 2 of the Civil Procedure Code, [Cap 33 RE 2019].

Mr. Mbaga Jonathan, the learned counsel for the 1st and 2nd Defendants did not take any issues with the Third Party's action in relation to the List of Additional Documents intended to be relied upon by the Third Party at this stage as he associated himself with the submissions made by the learned counsel, for the Third Party accordingly.

On his party, Mr. Francis Kesanta, the learned counsel, for the Plaintiff, contested the filing of the list of documents intended to be relied upon by the Third Party at this stage of the trial because the reasons as given by the Third Party for delay in filing the list was not satisfactory. That, the Third Party was therefore negligent. That, although the List of Additional Documents intended to be relied upon could be beneficial to the Plaintiff's case, he was contesting the reception of the said List at this stage for want of good cause as to the inordinate delay of about three years ever since the Third Party's Defence was filed in the Court.

That was all by the parties on this subject matter.

The Court is mindful of Paragraph 3 and 4 of the Third Party's Written Statement of Defence, which reads thus;

- "3. That, the contents of paragraphs 10 and 11 of the Plaintiff are highly disputed and the Plaintiff is put to strict proof hereof. The Third Party further states that, upon receipt of the claim from the 1st Defendant, the Third Party herein appointed a qualified assessor known as EMC Surveyors & Assessors Limited to investigate, Inspect and assess the damage of Plaintiff's vehicle*
- 4. That further to the above paragraph, on 21st October, 2014, the Third Party received a Report from the above mentioned Assessors and it was recommended that the estimated costs of repairing the Plaintiff's vehicle to its original position amounts to Tsh. 26,633,250 contrary to the Profoma Invoice number 511 dated 2nd September, 2014, raised by the Plaintiff through one Mashota auto Garage amounting to Tsh. 7,1250,000/= keeping in mind that under the Insurance Policy between the 1st Defendant and the Third Party is that the policy limit for third party property damage is Tsh 30 million only.*
- Copy of the Report by EMC SURVEYORS & ASSESSORS LTD attesting to the facts above is annexed hereto and marked as Annexure "M-1" and leave is craved that the same forms part of this Written Statement of Defence"*

The EMC surveyors and Assessors Ltd Report annexed to the Third Party's Written Statement of Defence as per paragraph 3 and 4

thereof *inter alia* named the Attachment to the Report included the Handwritten statements of both the third party policy Claimant and driver, photographs of vehicle T.796 BJU and importation documents. Yet, the said attachments were not included in the said Report which was annexed to the Third Party's Written Statement of Defence, hence the Third Party's action of filing the List of Additional Documents to be relied upon by her in defence at this stage.

Order XIII Rule 2 of the Civil Procedure Code, [Cap 33 RE 2019] provides that no documentary evidence in possessions or power of any party which should have been, but has not been, produced in accordance with the requirement of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof, and the court receiving any such evidence shall record the reasons for so doing.

Order XIII Rule 1 of the Civil Procedure Code, [Cap 33 RE 2019] guides that the parties or their advocates shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intended to rely and which has not already been filed in court, and all documents which the court has ordered to be produced.

It is therefore obvious from the legal point of view that in order for the Court to receive the list of documents intended to be relied upon by the Third Party at this stage there must be a good cause, given the inordinate delay in filing the list in the Court, for the law provides that such documents can be received by the Court at any

stage of the proceedings. That is to say, such documents can be received even during the defence as it is the case in this matter.

There is no dispute that the intended documents for reception by the Court have been named in a Report that was attached or annexed to the Third Party's Written Statement of Defence in paragraphs 3 and 4 thereof. The only problem is that the said intended documents, namely the handwritten statements of both the third party policy claimant and driver, photographs of vehicle T. 796 BJU and importation documents, which are the subject of the List of Additional Documents to be relied upon by the Third Party under consideration, were not included in the said Report. What was lacking was the substance of the intended documentary evidence which had not been included in the Report that was made available to the Court by then.


Since the parties were already aware of the said documentary evidence by names, they should now be ready to receive and see the said documents on their own. This forms the good cause, for the Court to receive the said list of documents at this stage of proceedings. The reception of the said documents at this stage, is therefore not prejudicial to any party to the suit despite of the delayed action by the Third Party.

The parties should be mindful of the matter of fact and law that the reception of the documents intended to be relied upon by either party to the suit under Order XIII Rules 1 & 2 of the Civil Procedure Code, [Cap 33 RE 2019] is quite different from admitting the said

documents in evidence. Order XIII Rule 3 of the Civil Procedure Code, [Cap 33 RE 2019] so guides.

That said, the leave of the Court is hereby given that the List of Additional Documents intended to be relied upon by the Third Party is hereby received by the Court. The copies thereof should be served upon the Plaintiff and the Defendants accordingly for their action, if any, in the due course of proceedings.

The law is that the party who intends to reply upon Order XIII Rule 2 of the Civil Procedure Code, [Cap. 33 RE 2019] for production in Court of additional list of documents intended to be relied upon by him must first so pray the court for good cause, if any, thereof.

 GEORGE M. MASAJU
JUDGE
30/11/2021