

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

AT DAR ES SALAAM

CIVIL CASE NO. 187 OF 2019

FAIR DEAL AUTO PVT LIMITED PLAINTIFF

VERSUS

CITY BOYS ELECTRONICS CO. LIMITED.....DEFENDANT

RULING

MRUMA,J

Prayer for adjournment is rejected. On 12.5.2022 this court made an order in terms of rule 2(1) of Order XVIII of the Civil Procedure Code (Amendment of First schedules) Rules of 2021 that in this case evidence in chief shall be given by way of witness statement and the Plaintiff were ordered to file their witness statements at least seven (7) days before the hearing date. To date, a period of over 21 days no witness statement has been filed and reason given is that the Managing directors of the Plaintiff's Company have left the country and now they are living in India An adjournment is being sought on the ground it is not known when they will be available. This is a strange reason. Court cannot conduct its business

its business at the whimsy of the parties. The Civil Procedure Code (Amendment of the First Schedule) Rules, 2021 which are made under GN NO.761 of 2021 do not provide for consequences of failure to file witness statements. However it is trite law that failure to file witness statement is tantamount to failure to prosecute one's case and under Rule 21(a) of Order VIII of the Civil Procedure Code as amended by GN No. 381 of 2019, when a Plaintiff fails to comply with any direction of the court, court may dismiss the suit. In this case the Plaintiff have failed to file their witness statement (s) which is equivalent to failure to call witness for prosecuting a case, Given the fact that this is a backlog case, and the fact that it is in certain as to when the Plaintiff's witness may come back to Tanzania and therefore became available to prosecute the case this court finds that the discretion prescribed under Rule 21(a) of order VIII of the Civil Procedure Code can be Judiciously exercised by dismissing the Plaintiff's case.

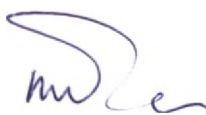
As regards, witness statements of the Defendants, the law under Rule 3(2) of Order XVIII of the Civil Procedure Code that witness statements of the Defendant are filed within 14 days after the closure of the Plaintiff's case. Thus the statements filed before the closure fo the

Plaintiff's case mere prematurely by filed and are hereby expunged from the records.

That said, the Plaintiff cause is dismissed for failure to be prosecuted. The Defendant will have their costs.

Order accordingly.




A.R. Mruma

Judge

2/6/2022