

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA**

AT ARUSHA

LAND CASE NO. 3 OF 2018

Between

M/S ARUSHA DULUTI LIMITED PLAINTIFF

VERSUS

M/S GREEN APARTMENTS LIMITED..... DEFENDANT

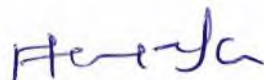
RULING

30.05.2022 & 31.05.2022

N.R. MWASEBA, J.

The Plaintiff, M/S ARUSHA DULUTI LIMITED, filed an action against the Defendant claiming for judgment and decree on the following;

- i. Judgment on admission for payment of a sum of \$1,380,000.00 as pleaded in paragraphs 3 and 11 hereinabove.
- ii. Payment of the balance of the principal sum of \$ 300,000.00 upon trial.
- iii. Interest at the rate of 15% per annum from the 23rd day of June, 2012 to the date of judgment.



- iv. Interest at the rate of 7% per annum from the date of judgment till payment in full.
- v. In the alternative to prayer (i) and (ii) hereinabove, payment of the principal sum of \$ 1,680,000.00.
- vi. Costs of the suit
- vii. Any other relief as the court may deem fit to grant.

During the hearing of the case the appellant was represented by Mr. Elvaison E. Maro, Learned Counsel and the respondent being represented by Mr. Kinabo Junior, also Learned Counsel.


On 30.05.2022 when PW2 was testifying in court he prayed to tender a certificate of occupancy to be admitted as exhibit. The counsel for the defendant objected the prayer. He told the court that it was not annexed to the plaint and when additional list of documents was filed it was filed under wrong provision. It was brought under **Order XXIII Rule 1 of the CPC** instead of filing it under **Order XIII rule 1 of the CPC**.

Mr. Maro for the plaintiff submitted that it was a typing error. He argued that this court when doing substance justice need not be bound with technicalities and those minor errors. He referred this court to the amendment of the CPC in 2008 through Act No. 8 and urged this court to invoke its powers under **Rule 3A and B of the CPC**. He further submitted

Attested

that, its true the document was not annexed to the plaint that is why they filed additional list of documents. The aim is to give notice to the other party and that they filed the additional document on 22.06.2021 and served the defendant on the same day. So, he said they have not been taken them by surprise and prayed for the preliminary objection to be overruled.

In his rejoinder Mr. Kinabo stated that the room under **Order XIII rule 1 of the CPC** is limited to the 1st hearing of the suit and not ahead of that and to say that. He disputed the fact that it was a typing error due to the fact that the plaintiff had enough time from 22.06.2021 to 28.12.2021 when the hearing started to clarify the same. He said the counsel for the plaintiff wanted the court to believe that it can be allowed to admit the document at this stage. He referred this court to **Order XIII rule 2 of the CPC** that the court is prohibited to do so after the first hearing.

He went on to say that the counsel has not given any reason as to why he wants the court to receive the document at this stage. He went further to say that overriding objective cannot be invoked because the objection raised is on the issue of tendering the document. 

After hearing the submission from both sides, the issue for determination is whether wrong citation of the provision to additional list of documents is fatal.

Order XIII rule 1 of the CPC provides 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 intend to rely and which has not already been filed in court, and all documents which the court has ordered to be produced."

It is not in dispute that the additional document to be produced was filed on 22.06.2021. The record shows that the hearing of the case started on 28.12.2021 that means the additional documents were filed in accordance with **Order XIII Rule 1 of the CPC** which as cited herein above requires the same to be filed before the first hearing.

The counsel for the defendant has not disputed that he was served with the additional documents. It is also not in dispute that the title deed was also among the listed documents. That means the defendant was duly notified.

In my considered view, the said notice being effected in accordance with the legal requirement is enough. The fact that it was filed under wrong provision of the law is not fatal in my view because the aim of giving

notice to additional document is to avoid taking the other party by surprise. This is not the issue in the case at hand. The defendant was aware of the filed additional list of documents.

Having fore stated, I find that the objection has no merit. It is hereby overruled forthwith. Title deed of Land Farm No.98/2/1 Tengeru area, Arumeru District which was listed in additional documents is hereby admitted as Exhibit. Costs to be in the cause.

It is so ordered.

DATED at ARUSHA this 31st day of May, 2022.



N.R. Mwaseba
N.R. MWASEBA

JUDGE

31.05.2022