

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

CIVIL CASE NO. 192 OF 2019

PETRONAS ENERGY(T) LIMITED..... ..APPLICANT

VERSUS

1.INSURANCE CORPORATION LIMITED..... RESPONDENT

2. PENTAGON INSURANCE BROKERS (T) LTD...RESPONDENT

RULING

24th January 2023

MKWIZU, J.:

This court on 29/11/2022 made an order requiring the plaintiff's counsel to file witness statements of all witnesses he intend to use in the trial. The filing was to be made at least seven days before the hearing date. When the parties appeared today for hearing, the Plaintiff's counsel, Mr. Ngatunga informed the court of his letter filed in Court on 17/1/2023 seeking for enlargement of time to file the required witness statement on the reason that the Managing director of the plaintiff's company, and the sole intended witness, in this case, was at the time of filing the statement in Mwanza bereaved by his father.

Objecting to the prayer, Mr. Nanyaro advocate for the 1st defendant condemned the plaintiff's counsel for failure to disclose time of the alleged unfortunate event and efforts made to rectify the situation. He supported his argument with the decision of this Court in **Fair Deal Auto Private limited v City Boys Electronics Co Limited**, Civil Case No. 187 of

2019(unreported). On the other hand, Mr. Nanyara asked the court to expunge the defendant's witness statement for being prematurely filed.

On his part, Mr. Nkuba, advocate for the 2nd advocate had no objection to the prayer made. He as well prayed that his witness statement filed be expunged pending closure of the plaintiff's case.

While admitting that the order to file witness statements was issued on 29/11/2022, in his rejoinder submissions, Mr Ngatunga stressed that they were by that order required to file their witness statements at least seven days before the hearing date. It was within that period and in the process of preparing the said statement he learned that his client in Mwanza following his father's death. And that he promptly notified the court of the situation via his letter on 16/1/2023.

I have evaluated the rival submissions and the circumstances of the entire case. The issue for the court's determination is only whether the prayer is justified or not. It is evident that the order by this court was given on 29/11/2023, directing the statements to be filed seven days before hearing date, which is today. In other words, the statements were to be filed on 17th January 2023 the date the court was notified of the absence of the plaintiffs' witness.

The action taken by Mr. Ngatunga on 16/1/2023 tracing his client for the preparation of the witness statements, a day before the scheduled filing date which was halted by the reported death and his prompt efforts taken to notify the court and his opponents of the impediment even before the hearing date demonstrated serious efforts on the party of the plaintiff toward compliance with the court order. I think, Mr

Ngatunga's explanation is reasonable under the circumstances warranting the court to accede to his prayer.

I have as well read the cited by Mr. Nanyaro. It is distinguishable. In that case, the Managing director of the plaintiff's company had moved to India, and it was not known to his counsel when exactly he would be available for that purpose which is not the case here. I find the prayer justified to allow the parties controversy-determined on merit.

Regarding the already filed defendant's witness statements, it is, without doubt, that its filing was in misconception of the court's order liable to be expunged from the records as I hereby do.

Consequently, leave is granted. The plaintiff is given three days' time from today to file her witness statement and serve it to the opposite parties. Hearing to proceed on 8th February 2023 at 8.30 am.

Order accordingly




E.Y. MKWIZU
JUDGE
24/01/2023