

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 2 OF 2016

SIMBANET TANZANIA LIMITED PLAINTIFF

VERSUS

SAHARA MEDIA GROUP LIMITED DEFENDANT

RULING

Date of the Last Order: 31/01/2018

Date of the Ruling 07/02/2018

SEHEL, J.

Another objection has been raised by the counsel for defendant in regard to "Annexure STL 3" to the plaint, email correspondences. The objection raised is that though there is an affidavit filed by the witness trying to authentic the emails but the said affidavit did not comply with Section 18(2)(a) and (b) of the Electronic Transactions Act of 2015 in that the deponent failed to state in his affidavit the reliability of the manner in which the emails were generated, stored , or communicated, and the

reliability of the manner in which the integrity of the date message was maintained.

It was replied that the affidavit under attack complied with the provision of the law since Paragraphs 5, 6, 7 and 8 of the affidavit clearly state the manner on how the email were retrieved. The counsel for plaintiff further submitted in any way section 18(1) of the Electronic Transactions Act of 2015 permits for admissibility of the electronic evidence after the court has been satisfied with the factors enumerated under sections 18(2) of the Act.

In rejoinder it was insisted that the reliability was not stated in the affidavit.

From the counsels' submissions, it is acknowledged and it is the law that electronic evidence is admissible in legal proceedings both in criminal and civil suits. However, for electronic evidence to be admitted, such electronic evidence must comply with the conditions laid down under Section 18(2) of the Electronic Transactions Act of 2015. Section 18(2) of the Act provides:-

"In determining admissibility and evidential weight of data

message the following shall be considered:-

- (a) The reliability of the manner in which the data message was generated, stored and communicated;
- (b) The reliability of the manner in which the integrity of the data message was maintained;
- (c) The manner in which the original was identified; and
- (d) Any other factor that may be relevant is assessing the weight of evidence"

The complaint by the counsel for defendant is in respect of subsection 2(a) and (b) of the Act that the deponent failed to satisfy the court. It was responded that Paragraphs 5, 6, 7 and 8 of the affidavit did lay down the conditions. In that regard, I have to reproduce the paragraphs:-

"5. That I was copied e-mails referred to above in my witness statement and said emails were stored in the computer kept by myself and I had never tempered with the said e-mail and any point in time. Further, I state that I am the one who printed the emails intended to be tendered as exhibit before this court.

6. That in my witness statement I did made reference to emails of 27th May, 2014 which records minutes of a meeting

held between officials of the Plaintiff company and the defendant company. That I got a printed copy of this emails from Mr. Mayur Ghella who is the Technical Operations Manager of the Plaintiff Company, for purposes of following payments that the defendant had committed to pay the Plaintiff.

7. That I also make reference to the statements of account made in Invoice with respect to monies that were outstanding from the defendant and payable to the Plaintiff. The said statement of account and invoices are electronically generated. That as the commercial Manager of the Plaintiff I was responsible for generating the statement of account and the invoices in the computer kept by myself , I had never tempered with the said statement of account and invoices at any point in time. I attach herewith copies of the said invoices and statement of account marked SimbaNET 2.

8. That I declare that the emails referred in paragraph 4 above, the statement of account and the invoices intended to be tendered before the Court are authentic to the best of my knowledge based

on the fact that the same had never been tempered by any person while stored in my computer."

From the above affidavit it is clear that the deponent did assure this court on the reliability of the emails stored, generated, communicated and maintained in his computer in that the computer that stored and maintained the emails cannot and could not be accessed by any other person except by himself. This type of authentication not only complied with Section 18(2)(a) and (b) but also with Section 18(4) of the Electronic Transactions Act of 2015. Consequently, the objection is hereby overruled. It is so ordered.



B.M.A Sehel

JUDGE

7th day of February, 2018

