

IN THE HIGH COURT OF TANZANIA

COMMERCIAL DIVISION

AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO 16 OF 2020

(Arising from Commercial Case No. 84 of 2019)

PROSPER JOSEPH MSELE APPLICANT/PLAINTIFF

VERSUS

AMI INTERNATIONAL CO. LTD RESPONDENT/DEFENDANT

Date of last order: 11/2/2020:

Date of Ruling: 12/02/2020:

RULING:

MAGOIGA, J:

The applicant filed a formal application seeking for an extension of time within which to file a witness statements of two witnesses namely, one, Elias Sipemba and Gu Xiaolin from China for reasons stated in the affidavit in support of the application and another prayer was for attachment of a contract to the statement of Kabole whose witness statement was dully filed within time. The instant application was filed under Sections 93 and 95 of the Civil Procedure Code (Cap 33 R.E 2002).

Upon being served with the application, the respondent through his legal counsel Mr. Mafuru Mafuru filed a counter affidavit stating reasons why this application should not be granted. Simultaneously, the learned counsel Mr. Mafuru raised two preliminary objections on a point of law to the effect that:-

- i) For Non enabling provision of law
- ii) For being vexatious, superfluous and total abuse of the court process.

I directed that the matter be heard by arguing both preliminary objections and the substantive application. I further directed that the counsel for applicant to start and then in the course of reply, the counsel for Respondent to start with preliminary objections then reply to the application and that rejoinder will follow suit of the order given.

The hearing started by counsel for applicant submitting on the merits of the application.

In reply, the counsel for Respondent, argued the two preliminary objections and in the course, upon being probed by the court on the substance of the preliminary objections and whether there was any prejudice in case, the application is granted, the learned counsel for the Respondent in response conceded that no prejudice and in the circumstances told the court that he prays to withdraw or abandoned the preliminary objections and went on to tell the court that he do not object the prayers of the applicant save for filing attachment and costs which should be borne by each party.

This court having considered then turn around of the counsel for Respondent by withdrawing or abandoning the preliminary objections, and upon conceding to the prayers of filing witness statements and for the interest of justice, am inclined without much ado to mark the preliminary objections raised marked withdrawn or abandoned and consequently grant the uncontested prayers for


filing the two witness statements of Elias Sipemba of TRA and Gu Xiaolin of China.

The same to be filed on or before 19/2/2020. This should be done as ordered to pave way for hearing of this suit on merits inter parties the soonest possible.

That said and done, the application No. 16 of 2020 is granted to the extent explained with no order as to costs.

It is so directed.




S. M. Magojiga,

Judge,

12/2/2020