

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND CASE NO. 170 OF 2018**

**KURUTHUM YUSUF** (suing as Administratrix of the  
Estate of SUGRA JAFARI).....**PLAINTIFF**

**VERSUS**

**SHABANI HASSAN** .....**1<sup>ST</sup> DEFENDANT**  
**HASSAN SEIF MTUNGAKOA**.....**2<sup>ND</sup> DEFENDANT**  
**SALEHE SEIF MTUNGAKOA**.....**3<sup>RD</sup> DEFENDANT**  
**ALLY SEIF MTUNGAKOA**.....**4<sup>TH</sup> DEFENDANT**

Date of Last Order: 11.04.2022  
Date of Ruling: 30.05.2022

**RULING**

**V.L. MAKANI, J**

When this matter came for hearing, Mr. Kerario for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants told the court that he had written to the City Director to certify certain documents to be produced to court. He also prayed for a summons to be issued to the City Director to be called to court to produce the said documents under Order XVI Rule 6 and 7 of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**). He said the City Director has shown willingness to assist them but he found it absurd to appear on behalf of these defendants because he also appeared for the plaintiff as a witness. Mr. Kerario also prayed for an adjournment but the court refused the prayer.

Mr. Karoli Mluge for the plaintiff objected vehemently on the issue regarding the letter to the City director. He said the letter was written on 18/05/20121 and the City Director responded on 16/11/2021 so he had ample time to do what he was presently praying for. He further said by the time the City Director was giving evidence they had time to request for the said documents. He said when the City Director wanted to tender the documents in evidence the defendants objected. He said the defendants had another opportunity during the Final Pre Trial Conference but even then they did not want to bring the said documents. Mr. Mluge said this was just a way of delaying the case.

In rejoinder Mr. Kerario said Counsel was misleading the court because according to him they only objected to documents which were incomplete. He said there are other documents which the City Director is supposed to tender which were annexed to the plaint but not tendered as exhibits. He said since they were not tendered the defendants are in need to use them in their evidence. He said he had taken long because the decision of the City Director to come to court was recently communicated to them.

Mr. Mshana for the 1<sup>st</sup> defendant said he was also interested in the documents which Mr. Kerario has requested.

I have listened to the arguments by Counsel for the parties. The letter to the City Director which listed the documents for certification is dated 18/05/2021. This was prior to the commencement of hearing of the suit on 16/07/2021. I have noted that some of the listed documents are annexures in the plaint and the Written Statement of defence. In that respect, if Mr. Kerario wanted these documents to be part of the record, he had ample time to do so vide a Notice to Produce under section 68 of the Evidence Act CAP 6 RE 2019, with explanation in whose possession the listed documents were and the need for the defendants to rely upon them. Or otherwise Mr. Kerario would have, at the Final Pre-Trial Conference, raised the issue for directions, but not at this stage when the plaintiff's case has been heard and closed. In the case of **JV Tangerm Construction Co. Limited & Technocombine Construction Limited (Joint Venture) vs. Tanzania Ports Authority & Another, Commerical Case No. 117 of 2015 (HC-Commercial Division)** (unreported) my brother Hon. Ismail, J stated:

*"...matters pertaining to the notices to produce are governed by the provisions of CAP 6, specifically section 68. This provision does not provide for time frame within which such notices have to be filed in court. Such filing does not depend on the stage at which the proceedings have reached, except that they should not be filed when a party's case has been closed."*

I subscribe to the above case, and as said Mr. Kerario had ample time within which to file notice for the documents to be formally tendered in court but not after the plaintiff's case was closed.

Further, as correctly said by Mr. Karoli some of the documents which Mr. Kerario have listed in the letter were tendered in court by **PW2**, Land Officer and representative of the City Director. But it was the same Mr. Kerario and also Mr. Mshana who objected to the tendering of these documents. This was an opportunity for them to see the originals and cross-examine the witness about these documents which they are now praying for their certification and production so for them to be part of the record. In any case, I have noted that some of the documents listed are supposed to be in the possession of the defendants themselves as such they ought to have the originals at hand.

For the reasons I have strived to explain, the prayer to call upon the City Director to present documents is rejected. Let the hearing of the matter proceed accordingly.

It is so ordered

  
**V.L. MAKANI**  
**JUDGE**  
**30/05/2022**

