

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

LABOUR DISPUTE NO. 07 OF 2022

**TANZANIA UNION OF INDUSTRIES AND
COMMERCIAL WORKERS (TUICO) COMPLAINANT**

VERSUS

SERENGETI BREWERIES LIMITED (SBL) RESPONDENT

RULING

03/4/2023 & 03/4/2023

B. E. K. Mganga, J.

When the dispute was called on for hearing on 3rd April 2023, at the time Ally Buruhani Luoga(PW1) asked the court to receive his witness statement to form part of his evidence and tender (i) minutes of Zoom meeting held on 4th August 2021, (ii) minutes of Zoom meeting held on 27th July 2021, (iii) email dated 8th November 2021 showing 10:41 as time of sending and (iv) email dated 8th November 2021 showing 10:38 as sending time to be admitted as evidence, Erick Denga, learned counsel for the respondent resisted. In resisting the witness statement of PW1 to form part of PW1's evidence, Mr. Denga submitted that the witness statement is not about the complainant but the witness himself. He argued further that

the witness statement was supposed to be for TUICO and not PW1 himself. Learned counsel for the respondent objected admissibility of email correspondences because they are electronic documents and that they were not accompanied by a certificate of authenticity to prove genuineness.

In imploring the court to dismiss the aforementioned preliminary objection, Mr. Jamal Ngowo, for the complainant submitted that all witnesses including PW1 are for the complainant. He added that it was a typing error that it was written otherwise. Responding to submissions relating to emails, he submitted that those emails were sent to the witness.

In rejoinder, counsel for the respondent submitted that complainant was supposed to comply with provisions of the Electronic Transaction Act. In relation to the witness statement, counsel conceded that the said witness relates to the dispute between the parties.

Having heard those submissions, I overruled the preliminary objections and proceeded with hearing of evidence. I reserved reasons promising the same to be given in the ruling that will be composed. Based on that promise, I have composed this ruling.

Let me start with the preliminary objection relating to reception of witness statement of PW1 to form part of his evidence. It is my view, that it was a typing error for PW1 to write that the said witness statement was for himself while there was no any pending dispute between himself and the respondent. The dispute that was before the court was between the complainant and the respondent. In fact, counsel for the respondent concede correctly in my view that, the said witness statement relates to the dispute between the parties. In his submissions, counsel for the respondent did not state the injustice that will be occasioned to the respondent for Ally Buruhani Luogo (PW1) to write that the said witness statement was for Ally Buruhani Luogo instead of TUICO, the complainant. Since no injustice will be occasioned to the respondent and in applying the overriding objective principle, I overrule the preliminary objection.

Counsel for the respondent resisted emails to be admitted as exhibit on ground that they are electronic documents and there is no certificate of authenticity to prove authenticity. I have read the provisions of the Electronic Transaction Act No. 13 of 2015 particularly section 18 of the said Act that relates to admissibility of electronic document and section 64A of the Evidence Act[Cap. 6 R.E. 2019] and find that it is not a prerequisite

condition that for electronic document to be admitted into evidence, a certificate of authenticity must be filed. The said provision reads:-

"18.-(1) In any legal proceedings, nothing in the rules of evidence shall apply so as to deny the admissibility of data message on ground that it is a data message.

*(2) In determining **admissibility** and **evidential weight** of a data message, the following shall be considered-*

*(a) the **reliability** of the manner in which the data message was **generated, stored or communicated**;*

*(b) the **reliability** of the manner in which the integrity of the data message was **maintained**;*

*(c) the manner in which its **originator** was **identified**; and*

*(d) **any other factor that may be relevant in assessing the weight of evidence.***

*(3) The **authenticity** of an electronic records system in which an electronic record is recorded or stored shall, in the absence of evidence to the contrary, **be presumed** where-*

*(a) there is **evidence that supports a finding that at all material times the computer system or other similar device was operating properly** or, if it was not, the fact of its not operating properly did not affect the integrity of an electronic record and there are no other reasonable grounds on which to doubt the authenticity of the electronic records system;*

*(b) it is established that the electronic record was recorded or stored by a **party to the proceedings** who is adverse in interest to the party seeking to introduce it; or*

*(c) it is established that an electronic record **was recorded or stored in the usual and ordinary course of business by a person who is not a party***

to the proceedings and who did not record or store it under the control of the party seeking to introduce the record.

(4) For purposes of determining whether an electronic record is admissible under this section, an evidence may be presented in respect of any set standard, procedure, usage or practice on how electronic records are to be recorded or stored, with regard to the type of business or endeavours that used, recorded or stored the electronic record and the nature and purpose of the electronic record.”(Emphasis is mine).

On the other hand, section 64 of the Evidence Act(Cap. 6 R.E. 2019] provides:-

*"64A.-(1) In any proceedings, electronic evidence **shall be admissible**.*

*(2) The **admissibility and weight** of electronic evidence **shall be determined in the manner prescribed under section 18 of the Electronic Transaction Act**.*

(3) For the purpose of this section, "electronic evidence" means any data or information stored in electronic form or electronic media or retrieved from a computer system, which can be presented as evidence.”(Emphasis is mine)

From the quoted provisions, it is my considered opinion that there is no requirement of filing an affidavit or a certificate of authenticity as a condition for admissibility of electronic evidence. It is my view that all matters such as originality, how the evidence was generated or stored,

who is the originator and how was identified can be proved without filing an affidavit or a certificate of authenticity. In fact, Section 18(3)(a), (b) and (c) of the Electronic Transaction Act(supra) that relates to authenticity, does not provide that in order to prove authenticity, a certificate must be filed. In fact, that section creates a presumption that the computer or device was working properly. In other words, once there is electronic document, it is presumed that the computer or the device was working properly. It is the duty of the person who objects admissibility of electronic evidence to convince the court that the computer or the device was not working in order for the court to decide against that presumption. It is my view that, the person objecting can only do so by raising tangible issues or doubts showing that the computer or the device was not working. Once that is shown, then, the person intending to tender electronic evidence will be required to prove that it was working properly. In the application at hand, nothing was submitted to convince the court not to apply the presumption created under the law. It is my considered view that, it is not the duty of the person tendering electronic document to file a certificate of authenticity to prove that the computer or device was working while already the law has created that presumption. At any rate, respondent can

test authenticity through cross examination of the witness and or bringing evidence to the contrary. More so, authenticity can also be proved by oral evidence. See the case of [Freeman Aikael Mbowe and Others vs Republic](#), Criminal Appeal 76 of 2020, [2021] TZHC 3705 and [EAC Logistic Solution Limited vs Falcon Marines Transportation Limited](#), Civil Appeal 1 of 2021 [2021] TZHC 3197 wherein this court held that it is not a requirement of the law for an affidavit to be filed to prove authenticity of electronic evidence. The witness himself can prove authenticity by oral evidence.

That said and done, I hereby overrule all preliminary objection raised by the respondent.

Dated in Dar es Salaam on this 3rd April 2023.



B. E. K. Mganga
JUDGE