

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 50 OF 2019

BETWEEN

AFRICARRIERS LIMITED.....PLAINTIFF

Versus

SHIRIKA LA USAFIRI DAR ES SALAAM LIMITED.....1st DEFENDANT

EQUITY BANK TANZANIA LIMITED.....2nd DEFENDANT

Last Order: 16th July, 2020

Date of Ruling: 25th Aug, 2020

RULING

FIKIRINI, J.

Prior to the hearing of the Plaintiff case the following three preliminary points of objection on point of law were raised by the defendants;

1. By the 1st defendant, that the plaintiff's witness statements were filed out of time without seeking an order for extension of time contrary to Rule 49 (2) of the High Court (Commercial Division) Procedure Rules 2012 (the Rules),
2. By the 2nd defendant that the witness statements and the additional list of documents have been filed out of time contrary to Rule 49 (1) and (2) of the Rules.

They thus urged the Court to dismiss the plaintiff's case for want of prosecution.

During the hearing the plaintiff was represented by Mr. Ngasa Ganja assisted by Ms. Moransia John and Mr. Haji Sama, while the 1st defendant enjoyed the legal services of Mr. Patrick Mtani, and Mr. Kephass Mayenje learned counsel appeared for the 2nd defendant. The preliminary points of objection were heard orally.

It was Mr. Mtani's submission that the witness statements of the 1st and the 2nd plaintiff witness have been filed out of the 14 days' time contrary to the order of this Court issued on 27th February, 2020, which categorically ordered parties to file their witness statements within those days from the date of the order. The plaintiff filed their witness statements on 13th March, 2020, while counting from the date of order, the deadline was 11th March, 2020, which means the filing was done two (2) days later and hence out of time.

Mr. Mtani further submitted that, the plaintiff counsel was present during the final pretrial conference so they were aware of the order of this Court. And in any case if they had difficulties in complying with the Court order, the law gives them room to apply for the extension of time. Since the witness statements have been filed outside the allowed time and without leave of the Court extending the time, thus the consequence for this failure to file witness statements is clear that the suit has to be dismissed for want of prosecution. Supporting his submission, he cited the

PSE

