

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)**

AT DAR ES SALAAM

COMMERCIAL CASE NO. 24 OF 2018

AKIBA COMMERCIAL BANK PLC PLAINTIFF

VERSUS

UAP TANZANIA COMPANY LIMITED DEFENDANT

Date of last Order: 04/08/2020

Date of Ruling: 04/09/2020.

RULING.

MAGOIGA, J.

This ruling is in respect of formal preliminary objection filed by Mr. Karoli Valerain Tarimo learned advocate for the defendant to the effect that, the witness statement for the plaintiff's witness in this suit was filed out of time, as such he moved this court to struck out the witness statement of, one, DAVID KOROSSO and consequently dismiss the suit with costs for want of prosecution.

The facts leading to this ruling are not complicated. Since the institution of the instant suit in this court, the proceedings went on well between parties up to the stages of Final Pre-Trial conference which was conducted on 11/06/2020. On that date, this court gave the following orders; it ordered and directed parties to file their respective witnesses statements within 14



days from that day in accordance with the Rules; parties, if they wish, to file additional list of documents, same be filed before filing of witness statements to enable them to be referred in the witnesses statements as exhibits; and lastly the matter was fixed for hearing of the main suit on 04/08/2020.

Parties complied with the court's directions as ordered above. However, the defendant's witness statement was filed on 24th June, 2020 and the plaintiff's witness statement was filed on 25/06/2020. When parties served each other of their respective witnesses statements as required by the Rules, the defendant's learned advocate raised and filed formal notice of preliminary objection on point of law dated 3rd August 2020 to the effect that, the witness statement filed by the plaintiff was filed out of time by a day and urged the court to struck out the witness statement and consequently dismiss the suit with costs, hence, this ruling.

The plaintiff has at all material time been enjoying the legal services of Mr. James Bwana, learned advocate. The defendant, on the other hand, is advocated by Mr. Karoli Valerian Tarimo, learned advocate.

Mr. Tarimo arguing the preliminary objection was brief to the point that, during Final Pre-Trial Conference, parties were ordered to file witness 

