

**IN THE HIGH COURT OF TANZANIA
(COMERCIAL DIVISION)
AT DAR ES SALAAM**

COMMERCIAL CASE NO. 174 OF 2017

AKIBA COMMERCIAL BANK PLC PLAINTIFF

VERSUS

GRAIN HARVEST LIMITED1ST DEFENDANT

ASIA SAID RAMSO2ND DEFENDANT

DOROTH HARUNI MUNYERI3RD DEFENDANT

RULING:

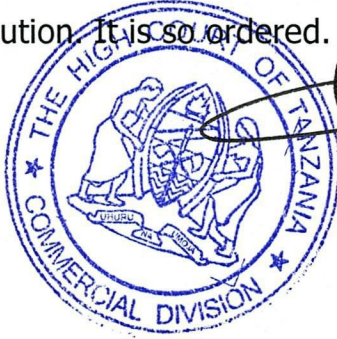
MWANDAMBO, J:

This matter was fixed for hearing today at 11:00 am pursuant to an order made on 17th September, 2018. When the case called for hearing, Mr. Kambo learned Advocate for the Plaintiff informed the Court that the only witness who was to testify and stand cross examination was no longer in the employment of the Plaintiff having been terminated. In such circumstances, the learned Counsel found himself in a dilemma because the likelihood of procuring the witness was too remote for him to ask for adjournment and so he left the matter for the Court's decision.

It is trite under rule 56 (1) of the High Court (Commercial Division) Procedure Rules, 2012 it is the duty of the party who intends to rely on a witness statement as evidence to cause that witness to attend cross examination. The Plaintiff has not discharged that duty and so, it must be visited by consequences prescribed under rule 56 (2) of the Rules that is to say; striking out the witness statement which I

here do because I have not seen any special or exceptional circumstance to hold otherwise. Having struck out the witness statement of the only witness for the Plaintiff, there will be nothing left out of the suit which remains unproved.

In consequence, the suit must be and is hereby dismissed with costs for want of prosecution. It is so ordered.




L.J.S Mwandambo

JUDGE

22/10/2018