

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

CIVIL CASE NO. 128 OF 2016

COAST WATER PROJECT (T) LIMITED..... ..PLANTIFF

VERSUS

NATIONAL DEVELOPMENT CORPORATION (NDC).. DEFENDANT

RULING

MKWIZU, J.:

When this matter came today for a hearing, neither the plaintiff nor his advocate was in attendance. On the other side, Mr. Edwin Joshua, the learned State Attorney was in court representing the respondent. When invited to address the court, the state attorney requested the court to dismiss the suit for want of prosecution for failure by the plaintiff to file his witness statements as ordered. He said the letter filed by the plaintiff's counsel is short of proof of the alleged accident and the whereabouts of the counsel. Reliance was made on two decisions of this court in **Amani Partners Limited and another V Khurran Iqbal Maqbool Chaudary and Two others**, Commercial case No 24 of 2017 and **Athanasia T. Massinde t/a Abeti Primary School V. The National Bank of Commerce Ltd**, Commercial Case No 30 of 2014 (all unreported).

I have scrutinized the records. In 2016, the plaintiff, Coast Water Projects (T) Limited approached the court for judgment and decree against the defendants praying for payment of Tsh 500,000,000/= being the costs incurred by the plaintiff in taking care of the defendant's rubber plantations at Kihuhwi area, in Muheza Tanga. General damages, interest,

and costs of the suit. As usual, the matter went through all preliminary stages to 23/11/2022, when this court, ordered the evidence in chief by the parties to be adduced by way of witness statements under rule 2(1) of order XVIII of the CPC. The plaintiff's witness statements were pursuant to that order to be lodged seven days before 24/1/2023 on which the hearing was to be conducted. But the plaintiff has to date not complied with the court order. What is on the records is a letter by the plaintiff's counsel dated 23/1/2023 seeking adjournment of the hearing on the reason that the plaintiff's intended witness has sustained injuries in an accident.

It is well settled that, the plaintiff's witness statement filed pursuant to rule 2(1) of Order XVIII of the CPC serves as evidence in chief warranting the prosecution of the plaintiff's case. The plaintiff's advocate who was present when the court gave the order ought to have known the consequences of the non-filing of the statements. His expectation for the continuation of the hearing of the matter today as suggested by his letter is a misconception. The only available remedy under the circumstances of the case is dismissal for want of prosecution as prayed for by the defendant's counsel.

As a result, the suit is dismissed for want of prosecution. Defendant to have her costs.

Order accordingly.




E. Y. MKWIZU
JUDGE
24/1/2023