

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
COMMERCIAL CASE NO. 40 OF 2015**

BACO AND AYUB TRADING COMPANY LTD..... PLAINTIFF

VERSUS

PERMANENT SECRETARY
MINISTRY OF DEFENCE & NATIONAL SERVICE.1ST DEFENDANT

CHIEF OF DEFENCE FORCES, TPDF HQ-.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

Date of Last Order: 19/09/2022

Date of Judgment: 21/09/2022

**RULING
(Reasons)**

NANGELA, J.

This ruling is in respect of an objection raised by Mr. Baraka Nyambita, Learned State Attorney following a prayer made by Mr. Seni Malimi, Learned Counsel appearing for the Plaintiff in this case. Mr. Malimi's prayer was based on Order XIII Rule 2 of the Civil Procedure Code, Cap.33 R.E 2019.

In his prayer, which he made together with another, Mr. Malimi sought to file certain documents which were not earlier filed in Court because they were generated subsequently when

the Plaintiff was seeking to comply with this Court's orders (Mteule, J.), issued in a ruling dated 21st day of September 2021.

After hearing the parties, I resolved to grant the prayers sought by Mr. Malimi and reserved my reasoning to a later date. This ruling, therefore, constitutes the reasons at to why I decided to grant the prayers sought by Mr. Malimi, in particular the prayer to file the documents in Court, and, at the mid of hearing of the Plaintiff's case. For a better understanding, I will summarize Mr. Malimi's reasons.

When Mr. Malimi prayed to have the documents filed in Court, his reasons were that, pursuant to the ruling of this Court dated 21st September 2021, (Mteule, J.) at pages 4-5, this Court granted the Plaintiff an opportunity to seek certification of certain public documents in line with the requirements of section 85 and 86 of the Evidence Act, Cap.6 R.E 2019.

Mr Malimi had submitted that, in the course of doing so, certain correspondences were generated leading to the

certification of the respective documents which correspondences will, as of necessity need to be filed in Court given the manner in which the certification was done by the Defendants.

He reasoned that, if that is to be made possible, and given that these new documents were coming into the record in the middle of the trial, resort should be had to their production with a leave of the Court under Order XIII Rule (2) of the CPC.

Order XIII Rule 2 of the CPC provides as follows:

“No documentary evidence in the possession or power of any party which should have been, but has not been, produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the court for the non-production thereof; and the court receiving any such evidence shall record the reasons for so doing.”

I considered the submissions made and resolved that, I should allow the Plaintiff to file the documents because, ordinarily, all documents as per Order XIII Rule 1(1) and (2) of the CPC are to be produced at the first day of hearing.

However, according to Order XIII Rule (2) of the CPC, documents which ought to have been produced but were not, may still be produced in Court under **Order XIII rule 2 of the Civil Procedure Code, Cap.33 R.E 2019**, provided that good cause is shown as to why they could not be produced as per the requirements of the law.

That legal position was reiterated by this Court in the case, **Bank of Africa (Tanzania) Ltd vs. Fatuma Said Ally and 6 Others**, Comm. Case No.139 of 2019, (unreported)(a ruling issued on 19th March 2021). In that ruling, this Court stated that:

“...documents may, as well, be produced in court for consideration under Order XIII rule 1 (1), and (2) of the CPC. However, those which were not produced in line with what rule 1 of Order XIII provides, may be

produced under Order XIII rule 2 where sufficient explanation is given. It means, therefore, that, such documents will still be received in Court unless challenged under a different law relating to admissibility of documents.”

See also the case of **National Bank of Commerce Ltd Vs.Nabro Ltd and Another**, Commercial Case No.44 of 2001, (unreported),as well as the Court of Appeal Decision inthe case of**Eusto K.Ntagalinda vs. Tanzania Fish Processors Ltd**, Civil Appeal No.23 of 2012 (CAT) (Mwanza) (unreported).

Besides, in the case of **Latifa Hassan Alibhai vs.Jayendra J Amrchand and Another, Land Case No.199 of 2019 (unreported)** (a ruling issued on 30th April 2021),this Court, when faced with an issue regarding the applicability of Order XIII rule 2 of the CPC, had the following to say:

“In my view ... although Order XIII rule 2 of the CPC calls for good cause to be shown to the satisfaction of the Court before document, not produced as per rule 1 of Order XIII, is permitted,

taking into account the principles of justice, equity and common sense, I find that this Court can still proceed and receive that particular document. The reasons for such a position [are] that, the document, ... can be of assistance in the proper determination of this suit. This sort of position should not seem to be alarming anyone ... Since: **“Courts exist to assure fair trials, documentary evidence, even though filed late, should not generally be excluded, if such evidence be needed for proper decision of the case....”**

In this instant case at hand, the documents sought to be produced for filing in Court were documents which were generated in the course of correspondences between the Plaintiff and the Defendants in the course of implementing the directives of this Court contained in the ruling issued by Her Ladyship Mteule, J., dated 21st day of September, 2021.

They are, as such, not new documents which takes the Defendants by surprise as they are fully aware of them. I have

even looked at them and find them to bear a stamp of the 2nd Defendant. Whether there is anything to be stated about the authenticity or otherwise of the stamp affixed on them, that is a different issue altogether.

To my understanding, therefore, the justification given by Mr Malimi regarding why these were being produced under **Order XIII Rule 2** constitutes a sufficient cause **under rule 2 of Order XIII of the CPC.**

It is for such reasons, therefore, I proceeded to overrule the objection and ordered that, the documents be allowed to be filed in Court.

It is so stated.

**DATED AT DAR-ES-SALAAM, THIS 21ST DAY OF
SEPTEMBER 2022**



.....
DEO JOHN NANGELA
JUDGE

