

TANZANIA / JUDGMENT

20200601 TZHC Dar es Salaam

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM CIVIL CASE NO. 479 OF 2016 IN THE MATTER OF SECTION 233 (1) OF THE COMPANIES ACT CAP 201:1 R.E. 2002:1 AND /1 IN THE MATTER

OF GO-LINK EXPRESS COMPANY LIMITED AND MAG MOTORS COMPANY LIMITED AND IN THE MATTER OF APPLICATION BY HASSAN ZUBERI MZALIA (In the capacity of the administrator of the estate of the late ZUBERI CHAM. KALTMZALIA) 1ST PETITIONER. I. VERSUS GO-LINK EXPRESS COMPANY LIMITED 1ST RESPONDENT I MAG MOTORS COMPANY LIMITED 2ND RESPONDENT KEITH G. MAGIGA 3RD RESPONDENT

RULING

Date of last Order: 2-J '5/2020 Date of Ruling: 01/06/2020 MLYAMBINA, J, In the course of hearing Hassan Zuberi Mzalia (PW1), it arose a legal objection towards tendering photocopies of the Memorandum and Articles of Association and the Certificate of Incorporation. It was testified by PW1 that the originals are at the company. 1 The leave to tender the photocopies was amplified by Counsel Daimu Khalfan. He submitted that, they issued a notice to the 1st respondent to produce the originals on 22 nd October, 2019 and served on 25 th October, 2019 but there was no response as per Section 67 (1) paragraph (a) and iii of the Evidence Act Cap 6 (R.E 2002). On his part, counsel Roman Masumbuko admitted that they received the notice on 25 th October, 2019 but it was not accompanied with the list of additional documents to be relied upon. It was contended by counsel Roman that under Order VII Rule 14 (1) of the Civil Procedure Code Cap 33, the Petitioner ought to have produced copy of the documents when filing. If he is to rely on those documents, he has to produce list of additional documents. As such, counsel Roman objected tendering of the documents for not being made part of the documents to be relied upon. In response, counsel Daimu submitted that there are two things ' different. Order VII Rule 14 is about pleading. It can be read ' together with Order XII Rule 1. According to Mr. Daimu, Order VII Rule 14 {1} requires all the documents on which one is suing must be accompanied with the plaint. Rule 14 (2) of Order VII is about documents to be relied upon. Thus, there one makes a list

that has 2 to be filed along with the plaint. In his view, in the list, it does not matter whether the documents listed are in the possession or in possession of another. It was the submission of Mr. Daimu that, if one is not in a position to do either what is required under Order VII Rule 14 (i) and 14 (2)/ then the law gives another chance under Order XIII Rule 1. On that note, counsel Daimu prayed the objection be overruled. In rejoinder, counsel Roman argued that Order VII Rule 14 (1) requires attachment of the document and not production. Rule 14

- (2) requires a separate list indicating that document will be used in the Court and Rule 15 talks of the document not in possession of the same. But Order XIII Rule 1 (1) and (2) require to indicate if those documents will be relied upon. It has to come with a list. Counsel Roman winded up his submission by stating that the fact the Petitioner has not indicated in the list of additional documents if will be relied upon, they have to produce the original documents. I have perused the records of this case I found along with the petition, the Petitioner annexed inter alia copies of the Memorandum and Articles of Association and the Certificate of Incorporation. 3 Order VII Rule 14 (1) (supra) gives obligation to the plaintiff for production of documents on which he is suing or relying. Order VII Rule 14 (1) of the Civil Procedure Code Cap 33 (R.E.2019) provides: Where a plaintiff sues upon a document in his possession or power he shall produce it in court when the plaint is presented and shall at the same time deliver the document or copy thereof to be filed with the plaint Order VII Rule 14 (2) (supra) provides that: Where the plaintiff relies on any other documents (whether in his possession or power or not} as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint. Order VII Rule 15(supra) provides: Where any such document is not in possession or power of the plaintiff, he shall if possible, state in whose possession or power it is. Order XIII Rule 1 (10 and (2) (supra) provides.·
1. (i) The parties or their advocates shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely and which has not already been filed in court, and all documents which the court has ordered to be produced.
 2. No documentary evidence in the possession or power of any party which should have been, but has not been, produce 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. Considering the above provision of law, it is clear that all the cited provisions are aimed to accord parties an opportunity that none of the parties should be taken in surprise and should have ample time to prepare and contest. There is no dispute by the two counsel that Order VII Rule 14 (1) (supra) requires the documents on which a party is suing must be attached with the plaint. On that note, Counsel Daimu is correct to say that Order VII Rule 14 (1) is about pleading. But he is not proper to say that it can be read with Order XIII Rule 1 because the later does not talk of pleadings. It talks about the documentary evidence to be produced at the first hearing. 5 . \ Rule 14 (2) of Order VII is about list of other documents relied upon by the plaintiff be it in his possession or not. It has

to be listed as additional document or annexed. In the notice to produce original documents made under section 67 (1) (a) (i) and section 68 of the Evidence Act 1967 Cap 6 R.E 2002, the Petitioner required the respondent to produce originals of the following documents:

- a) Certificate of Incorporation No. 83255 in the name of Mag Motors Co. Ltd.
- b) Certificate of Incorporation No. 89733 in the name of Go-Link Express Company Ltd.
- c) Memorandum and Article of Association Mag Motors Co. Ltd.
- d) Memorandum and Article of Association Go-Link Express Company Ltd.
- e) Letter of transfer of share/stock.
- f) Bank Statement Account No. 00573550001 in the name Of Go-Link Express Company Ltd from Habibu African Bank Limited.
- g) TRA statement of Tax for TIN No. 104-162-177 in the name of Go-Link Express Company Limited from Habib African Bank Ltd. 6 ,, Counsel Roman has argued correctly that one cannot rely on a document which has not listed upon. But, as per the available record, the notice filed on 22 nd October lacks that list of documents to be relied upon by the Petitioner. In the premises of the above, the objection is sustained. Costs shall follow eve 01/ 20 Ruling delivered and dated 1st June, 2020 in the presence of the 1st June, 2020 in the presence of the 1st Petitioner and Roman Masumbuko, Advocate holding brief of Daimu Khalfan, Advocate for the Petitioners and Roman Masumbuko for the respondents . . MLYAMBINA UDGE 01/06/2 7

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