

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

AT DAR ES SALAAM

COMMERCIAL CASE NO. 74 OF 2023

EURO GAMES TECHNOLOGY LIMITED PLAINTIFF

VERSUS

EVERGRANDE INVESTMENT

DEVELOP CO. LTD. (STARCITY CASINO)..... DEFENDANT

RULING

Date of last order: 26/03/2024

Date of ruling: 26/03/2024

AGATHO, J.:

This ruling was prompted by the objection raised by MrGodlisten Lyimo, counsel for Defendant against the admissibility of invoices sought to be tendered in evidence in the trial by PW1, Lilia Georgieva, the only witness of the Plaintiff. The basis of the objection was that the invoices are data messages hence their tendering in evidence has to comply with the provisions of Section 18(2) of the Electronic Transactions Act [Cap 442 R.E. 2022] (herein cited as ETA) requiring proof reliability of manner in which data message was generated, stored, and communicated prior to its admission in evidence. The objection was contested by Mr. Nobert Mlwale,

for the Plaintiff. The parties were invited to make their submissions so that the court could deliver its ruling on fulcrum of the objection.

As a brief background, the plaintiff suit is that she entered contracts with the defendant for supply of gaming equipment/machines for hire. It is her case that she supplied the gaming machines and systems to the defendant. However, the latter has refused or neglected to pay gaming machines hire rent due. The plaintiff is thus seeking inter alia a declaration that the defendant breached the gaming machine hire contracts and payment of USD 214, 083.65 outstanding rent due from leasing the gaming machines, interest, general damages, and costs for the suit. The defendant on her side has disputed the plaintiff's claims and prayed that the suit be dismissed with costs. Hence the matter proceeded to trial.

During hearing of the plaintiff's case, PW1 in her testimony in chief sought to tender invoices from the plaintiff's company which met with the objection from Mr Lyimo for the Defendant. PW1 referred to invoices stated on paragraph 11 of her witness statement. She testified that the invoices were issued in January 2022 to December 2022. She testified that she prepared and signed them. And they bear plaintiff company's stamp.

The invoices are twenty in total. She prayed that they be admitted as exhibit.

MrLymo for the defence raised an objection to admission of the invoices. He submitted that he objects theiradmission under Section 18(2) of the Electronic Transactions Act [Cap 442 R.E. 2022]. MrLyimo went on to elaborate that when praying to tender the documents the witness only stated that the documents were executed by herself and stamped with the company stamp. She did not tell as per documents (invoices) she wanted to tender; these are generated by the computer system. Therefore, the witness ought to have identified or stated that the type of system which was used to generate that data message, a printer used and manner in which the document, was stored and communicated to the witness. He added thatPW1 also ought to show the authenticity of the system from which the document originates. In his view that was never mentioned here. And therefore, it offends the provision of Section 18(2) of the ETA. He supported his submission with the case of **Mohamed Enterprises Tanzania Ltd and Another v. Shishir Shyamsingh**, Civil Cas No. 03 of 2021 HCT at Kigoma at page 11 last paragraph, which held that:

"I will say the following: that, before leading a witness to tender an electronic document the party leading a witness to tender an electronic document the party leading the witness must lay the foundation generally required before tendering documents and show the court that the witness is competent to tender the document. He will thereafter lead the witness to testify say the type of system and the device used, the type of printer, the manner in which the document was generated, stored and communicated to the witness, the originator and the authenticity of the system and the printer. All done, he will then ask the witness to say, if he was ready to tender the document as exhibit. It is not enough to lead the witness to the identification of the document and proceed to tender it."

Therefore, it was Mr Lyimo's suggestion that on the strength of the submission they have made, the statutory provision and the case law cited,

the witness has failed to lay foundation on how to tender the said documents. Hence, the court should refuse to admit the documents (invoices) in evidence. Because in the event these documents are admitted they will prejudice the defendant as they were never communicated to the defendant.

Mr. Robert Mlwale for plaintiff, resisted the objection and respondent that the invoices are not data messages. Therefore, they are not governed by the Section 18(2) of the ETA. He went on submitting that Section 3 of the ETA defines data message to mean data generated, communicated received or stored by electronic, electromagnetic, optical, or other means in a computer system or for transmission in one computer system to another. According to him, the witness stated that she is the one who prepared the invoices, signed them and stamped them. These invoices were never communicated to her from another source electronically. They do not qualify to be termed data message. He argued further that there is no electronic communication in between. It is therefore wrong to say that the way they are being tendered contravenes the provision of Section 18(2) of the ETA. Counsel Mlwale submitted that even the case of **Mohamed Enterprises and another** (supra) is totally distinguished from the

circumstances of the case at hand as seen on pages 5 and 9 of that decision. It dealt with printout of an email that was sought to be tendered. Under the ETA section 18(2) emails are data generated and communicated electronically. He thus prayed for the objection raised to be dismissed because the invoices sought to be tendered are not electronically generated, hence not data messages.

Mr Lyimo rejoined by accusing the plaintiff's counsel for failing totally to understand the nature of the objection as a result he ended up misleading the court. It was his rejoinder that the plaintiff's counsel cited Section 3 of the ETA, defining a term data message. Mr Lyimo recalled that the cited provision defines data message as data generated, communicated, received, stored or communicated from one computer system to another. He submitted that the invoices sought to be tendered were prepared, printed out and signed by PW1. Despite that Mr Lyimo contended that the witness failed to tell which system was used for preparation of the documents. It was his view that these are electronic documents. They were prepared electronically. He added that PW1 has failed to lay the foundation as to how they were prepared.

Mr Lyimo also reacted to the Plaintiff's counsel citation of page 5 of **Mohamed Enterprises' case** (supra) by submitting that that decision talked about email and here there are invoices and added that these are different. In his side Mr Lyimo regarded such view as being incorrect because both are data messages. He in the end reiterated his submission in chief.

I have heard the objection raised by Mr Lyimo for the defence against the invoices that PW1 wanted to tender in evidence. The basis of his objection is that these documents are data messages, and they are thus regulated by Section 18(2) of ETA. That Section provides for a manner in which reliability of data message may be established or proved. Mr Lyimo contended that the witness did not lay the foundation of the invoices she wishes to tender. She did not tell the court by which computer system were the invoices generated. According to him, the witness told the court that she prepared, printed, and signed the invoices. Mr Lyimo cited the case of **Mohamed Enterprises and another** (supra). His counterpart, Mr Mlwale for the plaintiff protested the objection and submitted that the objection should be dismissed because the invoices sought to be tendered are not data messages and hence not regulated by Section 18(2) of the ETA.

MrMlwale went on defining the term data message under Section 3 of the ETA. He also submitted that the decision in **Mohamed Enterprises and another** (supra) is distinguished from the case at hand in that it dealt with email and not invoices. The latter are not data messages while the former is. Mr Lyimo rejoined by stating that the definition of data messages under Section 3 of the ETA includes the invoices that they were prepared or generated by computer and later printed out. He thus submitted that the invoices fall under Section 18(2) of the ETA. It was his view, that the witness ought to have complied with that Section.

The court has considered the submissions by the counsel representing the parties and holds as follows: that the invoices are data messages because they were generated by a computer system. Therefore, they are captured by Section 3 of the ETA. Moreover, Section 18(2) of the ETA applies to invoices that are generated or prepared by using the computer system. These are not handwritten invoices. PW1 ought to have laid foundation of the said invoices just like as it was required in **Mohamed Enterprises and another (supra)**. However, that was the old position of the law. The new position is found under Section 29(2) of the Legal Sector Laws (Misc. Amendments), Act No. 8A of 2023 that amended

Section 18(2) of the ETA by deleting the word “admissibility”. It means that from the time the amendment came into force the data messages sought to be tendered in evidence may be admitted without subjecting them to reliability requirements prior to its admission into evidence. They will be subjected to reliability tests during weighing or evaluation of evidence and not at the admission stage. That is the task of the court not the witness. In lieu of the amendment cited it is thus not mandatory to do reliability tests at admission stage. It may be good to do so but it is not mandatory.

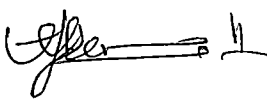
For the foregoing reasons the objection is overruled, and the invoices are admitted as exhibit P3.

No order as to costs is given.

Order accordingly.

DATED at DAR ES SALAAM this 26th Day of March 2024.




U. J. AGATHO
JUDGE
26/03/2024

Court: Ruling delivered today, this 26th March 2024 in the presence of Nobert Mlwale, advocate for the Plaintiff and Godlisten Lyimo for the Defendant.



A handwritten signature in black ink, appearing to read "U. J. Agatho".

U. J. AGATHO

JUDGE

26/03/2024