

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 112 OF 2000

DR. CHARLES V.M. MGANA PLAINTIFF

VERSUS

PARITOSH PALAV 1ST DEFENDANT
EDITOR THE EXPRESS 2ND DEFENDANT
MEDIA HOLDING (T) LTD. 3RD DEFENDANT
NATIONAL NEWSPAPERS LTD. 4TH DEFENDANT

Date of last order - 9/7/2008
Date of Ruling - 18/8/2008

R U L I N G

SHANGWA, J.:

On 13th December, 2007, learned counsel for the 2nd and 3rd defendants, Mr. Mustafa Chando filed a notice of Preliminary Objection that the suit is incompetent to proceed to hearing for non-compliance with the agreed Speed Track and that it ought to be struck out.

On 29th February, 2008, I ordered that the Preliminary Objection be disposed of by way of written submissions. Both counsel for the parties complied with this order.

In his written submissions, Mr. Mustafa Chando admitted that no Speed Track was fixed by the Court in this case. However, he submitted that although no Speed Track was fixed by the Court, the maximum Speed Track within which the case has to be resolved is Speed Track four which is a period of twenty four months from the commencement of the case.

He contended that since the suit between the parties was filed on 16th March, 2000, the period of twenty four months within which to conclude the case between the parties has already expired and that as the plaintiff has not applied for extension of time, the suit is incompetent to

proceed to hearing and that it should be struck out with costs. In support of his contention, he referred the Court to the provisions of O. VIIIA r. 3 (1) of the Civil Procedure Code. He also referred the Court to **High Court Civil Case No. 124 of 1998 Absolom L.S. Msaka vs Peter Massawe and Another (unreported)** in which Madame N.P. Kimaro, J. as she then was struck out the suit on grounds that the period scheduled for finalization of the suit had expired and the plaintiff had not sought leave to extend the same. Furthermore, he referred the Court to **High Court Civil Appeal No. 17 of 2005 Mwanza City Engineer & Another vs Anchor Traders Ltd. (unreported)** in which Madame R.M. Rweyemamu, J. declared the proceedings of the District Court of Mwanza in Civil Case No. 88 of 1998 which were conducted after the expiration of the Speed Track which had been fixed to conclude the same as a nullity. Another case which was

referred to the Court by him is **Commercial Case No. 71 of 2004 Tanzania Fertilizer Co; Ltd. Vs National Insurance Corporation Ltd. and Another (unreported)**

in which Massati, J. as he then was held inter-alia that if a party finds that the deadline for the finalization of his case is about to expire, he is legally bound to seek extension or amendment of the Scheduling Order well before its expiry and that if it expires his duty is to apply for extension of time for filing an application for departure.

Learned counsel for the plaintiff Mr. Kalolo contended that as no Speed Track was determined by the Court, the 2nd and 3rd defendants' preliminary objection is wrongly founded and misconceived and that it is intended to delay the final disposal of the matter. He said that as no Speed Track was ever fixed by the Court, the preliminary objection stands unfounded.

The issue to be determined by this Court is whether or not the suit is incompetent to proceed to hearing for non-adherence to the provisions of O. VIII A r. 3 (1) of the Civil Procedure Code and for being outside the Speed Track periods provided for under O. VIII A r. (3) (a) – (d) of the Civil Procedure Code.

According to O. VIII A r. 3 (1) of the Civil Procedure Code, the Speed Track of every case has to be ascertained by the presiding judge or Magistrate within a period of twenty one days after the pleadings are complete. In this case, the suit was presented for filing on 16.3.2000 but until todate the pleadings are not yet complete. This is because the 1st and 4th defendants have not yet filed their written statements of defence until todate. In fact, they were notified about this suit by publication in the Guardian News Paper of 29.5.2000 but they have never appeared. Under

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such circumstances, a first scheduling and settlement conference in which to ascertain the Speed Track of this case could not be held.

The purposes of ascertaining the Speed Track of every case under the provisions of O. VIII A of the Civil Procedure Code is nothing but to check the delay in dealing with civil cases. The way how Speed Tracks have to be determined is laid down under O. VIII A r. (3) (a) – (d) of the Civil Procedure Code. Under the said provisions, cases are given Speed Tracks in accordance with their nature. There are four types of Speed Tracks which are provided for under those provisions. These are as follows:-

Speed Track One is reserved for fast cases which are considered by the Judge or Magistrate to be fast cases capable of being or are required in the interest of justice

to be concluded fast within a period not exceeding ten months from commencement of the case.

Speed Track two is reserved for cases considered by the judge or Magistrate to be normal cases capable of being or are required in the interests of justice to be concluded within a period not exceeding twelve months from commencement of the case.

Speed Track three is reserved for cases considered by the judge or Magistrate to be complex cases capable of being or are required in the interest of justice to be concluded within a period not exceeding fourteen months from commencement of the case.

Speed Track four is reserved for cases considered by the judge or Magistrate to be special cases which are neither

considered to be fast, normal nor complex which nonetheless need to be concluded within a period of twenty four months from commencement of the case.

As it can be seen, every case has a maximum period within which it has to be concluded depending on its nature. It is the role of the judge or Magistrate to determine the Speed Track of every case after consultation with the parties. Unfortunately, in this case, no Speed Track was determined by this court. Now, can the plaintiff's suit be struck out for the failure by the Court to determine its Speed Track? The answer is no. As this Court did not determine the Speed Track of this case, the blame has to lie on it and if learned counsel for the 2nd and 3rd defendants thinks that this court erred by not doing so and that such error is detrimental to the rights of the 2nd and 3rd defendants or that such error amounts to a miscarriage of

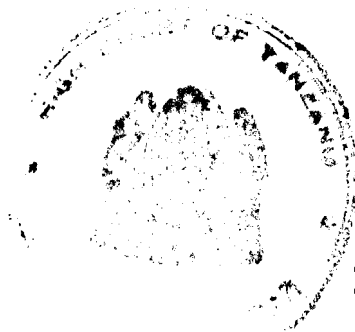
justice, the best thing that could have been done by him is to apply to the Court of Appeal of Tanzania for revision of its proceedings.

At any rate, there is no provision under O. VIII A of the Civil Procedure Code which prohibits the court to hear the case where no Speed Track has not been determined. In this particular case, as no Speed Track was ever fixed, it would be unfair to say that such period has expired and to require the plaintiff to apply before this court for extension of time within which this court should finalize his case.

The cases which were cited by Mr. Mustafa Chando to support his preliminary objection against the hearing of this case are distinguishable from this case. Whereas in **High Court Civil Case No. 124 of 1998 Absolom L.S. Msaka vs Peter Massawe and Another (unreported); High**

Court Civil Appeal No. 17 of 2005 Mwanza City Engineer and Another vs Anchor Traders Ltd (unreported) and Commercial Case No. 71 of 2004 Tanzania Fertilizer Co; Ltd. vs National Insurance Corporation and Another (unreported); the Speed Track of those cases had been fixed, in this case no Speed Track was ever fixed. I hold therefore that those cases do not apply in this case.

For these reasons, I hereby dismiss the 2nd and 3rd defendants' Preliminary Objection against the hearing of the plaintiff's case. I do so with costs.



A. Shangwa

JUDGE

18/8/2008

Delivered in open court this 18th day of August, 2008 in the presence of Mr. Kalolo for the plaintiff and in the absence of Mr. Chando for 2nd and 3rd defendants.




A. Shangwa


JUDGE

18/8/2008


Mr. Kalolo for the plaintiff: - My lord, in view of this court's ruling which has just been delivered. I pray for a date of hearing and Counsel for the 2nd and 3rd defendants to be notified.

Order: Hearing on 19/9/2008. Mr. Mustafa Chando for 2nd and 3rd defendants to be notified. Assessors to be

notified of the date fixed for hearing of this suit.



A. Shangwa



JUDGE

18/8/2008