

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NUMBER 44/ 1993

REV. CHRISTOPHER MLIKILA.....APPELLANT

VERSUS

HORACE KOLIMBA AND 6 OTHERS.....RESPONDENT

R U L I N G

MSUMI, J:

On 20/3/93 plaintiff and Rev. Christopher Mlikila filed a suit on defamation against the eight defendants. He claimed from them shs.350 million being unliquidated damages. By 20/4/94 pleadings were completed. Except for the third defendant Job Lusinde and Seventh defendant Baraza Newspaper, written statements of defence for the other defendants had been filed and duly served on the plaintiff. In their joint written statement of defence, first defendant Horace Kolimba who was, at the material time, the General Secretary of Chama cha Mapinduzi, and sixth defendant the Registered Trustees of Chama cha Mapinduzi, hereinafter referred as CCT, raised a counter claim in which they jointly claimed shs. 800,000,000 million as damages suffered by them as a result of defamatory words uttered by the plaintiff.

According to the record the case was fixed for hearing for the first time on 9/8/94. For unrecorded reason the case did not take off on that day. It was adjourned for mention on 14/9/94 and eventually fixed for hearing on 22/11/94. On that day plaintiff was absent and the court was informed by his wife that he was on tour in the United States. Acting on this information the case was adjourned for hearing on 7/3/95. Again on that day plaintiff was absent. His wife told the court that he was then in London and he would have come back after getting assurance from the Director of Criminal Investigation of his safety against the rumoured plan of assassinating him. After overruling the defence counsels' prayer for dismissal of the suit for non appearance of the plaintiff, the court adjourned the case for hearing on 25/7/95 to 28/7/95. The wife of the plaintiff was hopeful that within those four months plaintiff would have come back. Indeed the plaintiff is now back. For this information the court takes judicial notice of what has been reported in the newspapers. But for unexplained reason plaintiff is again absent.

In their joint submission counsels for the defendants ask for the dismissal of the suit either for non appearance as under Order 9 rule 8 or under Order 17 rules 15(2)(iv) of Procedure Code as amended by G.N.508 of 1991.



In addition Mr. Nyangarika who is advocating for first, fourth and sixth defendants is praying that first and sixth defendants be allowed to prove their counterclaim ex parte.

From the chronological events of this case as afore mentioned, I am convinced that plaintiff is aware that the case had been scheduled for hearing on 25/7/95. This date was fixed in the presence of his wife who he had been apparently instructed to keep the court informed of his whereabouts. As pointed out earlier, plaintiff is back in the country hence he ought to have appeared for his case as scheduled. Alternatively he ought to have furnished the court with explanation, as he had been responsibly been doing in the previous occasions, of his absence. He has done none of the two. Taking into account his protracted record of absence, the learned counsels for the defendants are, with respect, right in requesting the court to invoke the provisions of Order 9 rule 8 of the Civil Procedure Code.

But even if it is argued that the application of the said provision is inappropriate according to the facts on record, the suit is dismissable under the inherent powers of the court. His conducts are clear indication that plaintiff is abusing court process. It is the duty of the court to arrest such misconduct by using its inherent powers. The observation of the court of Appeal for Eastern Africa in Mukisa v West End Co. (1969) E.A. 696 is quite illustrative on this view. Delivering the judgment of the court, Law, JA said:-

"I am of the opinion that the provisions of the Civil Procedure Rules for the dismissal of suits for want of prosecution do not purport to be exclusive, and do not fetter the court's inherent jurisdiction to dismiss suits in circumstances not falling directly within those provisions, if it is necessary to do so to prevent injustice or abuse of the process of the court."

With respect, this observation is quite relevant in the circumstances of this case. Hence this suit is dismissed, with costs, for non appearance, hence want of prosecution, either under Order 9 rule 8 or under section 95 of the Civil Procedure Code.

As the regards the counter claim, despite of being served with the same plaintiff has not offered defence as required by Order 8 rule 11(1) of the Civil Procedure Code. Hence in terms of Order 8 rule 14(1) of the Civil Procedure Code, first and sixth defendants are granted leave to prove their counter claim ex parte by affidavit.

H. A. MSUMI

JUDGE.

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Mrs Maajar for other counsels.

Plaintiff absent

Mr. Msclom for Nyangerika

I would pray that the exparte proof be by oral evidence so that assessors may be summoned.

COURT: The Court is grateful for this information. Hence it is ordered that ex parte proof is by oral evidence.

ORDER:

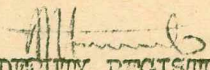
Ex parte proof 22/9/95 Assessors to be summoned.

H. A. MSUMI

JUDGE

27/7/95

I CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL.

  
SENIOR DEPUTY REGISTRAR

DAR ES SALAAM.