IN THE HIGH COURT OF TANZANIA

( DAR ES SALAAM DISTRICT REGISTRY )

AT DAR ES SALAAM

CIVIL CASE NO. 335/99

1. JOSEPH DONATI KESSY )
2. NEMES JOSEPH DONATI ) ..... APPLICANT

Versus

JUMA MAGEMBE NGOMANI ..... RESPONDENT

# R U L I N G

IHEMA J:

On 7th September 1999 the plaintiffs Joseph Donat Kessy and Nemesi Joseph Donati filed in this Court Civil Case No. 335/99 against JUMA MAGEMBE NGOMANI AND THE CHAIRMAN, CITY COMMISSION seeking among others a declaration that the two houses on Plots No. 419 and 420 Block B Sinza Kinondoni District are lawfully owned by them. Upon filing the plaint on 7th September 1999, the plaintiffs through the services of D.K.Mutabuzi & Co. Advocates also filed a Chamber Summons under Order XXXVII Rule 1 and 2, Section 68 (C) and (e) and 95 of the Civil Procedure Code praying for temporary injunction against 1st Respondent / Defendant from evicting the tenants and taking possession of the houses under dispute and the subject matter of the proceedings. On 14/10/99 Mr. Juma Magembe Ngomani 1st Respondent and Defendant entered appearance prayed for and was granted leave to counter the Chamber application. He was to file his counter affidavit on 22/10/99 and the application was set for hearing on 9th November, 1999.

On 9th November 1999 the applicants / plaintffs appeared but 1st respondent / defendant did not appear and had not filed his counter - affidavit as ordered whereat the applicants / plaintiffs were given leave to argue the application exparte on the very day. Following the applicants/ plaintiffs submissions the court granted the temporary injunction sought against the Respondent / Defendant, his agents or any person acting under his authority restraining them from herassing or evicting the applicants/ plaintiffs tenants occupying the houses on Plots 419 & 420 Block B Sinza Area pending the determination of the suit filed.

Since the grant of the temporary injunction on 9th November 1999, the case has been mentioned four times on 14/12/99, 9th February 2000, 5th April and today 1/6/2000. To day the 1st respondent / defendant appeared in person and advocated by professer Mgongo Fimbo who informed the court that he has since April 2000 accepted to take up the brief of the 1st respondent / defendan on a legal aid basis. Upon being informed of the status quo of the case,

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Professor Fimbo prayed for leave for extension of time to file a written statement of defence, a prayer which was vehemently resisted by Mr. Lyimo learned advocate for the plaintiffs. Mr. Lyimo argued that in terms of Order VIII of the Civil Procedure Code, the defendant's normal time to file his defence is twenty one days (21) from 14/10/99 when he entered appearance unless extension of time was granted. Mr. Lyimo further argued that in terms of Order VIII Rule 1 and 2 of the Civil Procedure Code as amended by GN 422/94 the court is no longer empowered to extend time to file the defence as from 6th November 1999. Mr. Lyimo therefore urged the court to reject the application for extension and proceed either to enter judgment or order to preve the case ex parte by oral evidence under Order VIII Rule 14 (2).

In his right of reply Professor Fimbo while conceding to Mr. Lyimo's argments requested the court to use its in herent powers in terms of Section 93 and 95 of the Civil Procedure Code to grant the extension sought for the ends of justice to be met in the case under reference particularly taking into account that the defendant is illiterate with no means.

It is not in dispute that there has been an inordinate delay on the part of the 1st defendant to file his written Statement defence after having being served with the plaint and upon entering appearance on 14/10/99. There has been no sufficient cause or reason given for the delay for this court to exercise either its discretion and or inherent powers under Section 93 and or 95 of the Civil Procedure Code in line with the argment of Professer Mgongo Fimbo.

On the other hand there is the submission by Mr. Lyimo learned advocate that in terms of Order VIIII Rules (1) and (ii) of the Civil Procedure Code as amended by GN 422/94, following this inordinate delay this court's hands are tied from further extending the period to file the defence in question. I agree and note further that the force behind the amendment in GN 422/94 is to restrict the period for pleadings so that the matters under dispute go to trial earlier than later. I am afraid the 1st defendant cannot escape the force in Order VIII Rule 14 as amended by GN 422/94. Accordingly I reject the prayer for extension of time to file a defence on the part of the first defendant and order that the plaintiff proceed to pove the case exparte against the first defendant.

S. IHEMA
JUDGE
2/6/2000

CORAM: IHEMA J.
Plaintiffs / Applicant ) LYIMO
Plaintiffs / Applicant )
Defendant / Respondent Prof. Fimbo.

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