

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 421 OF 1999

PATRICK CHAMLOMO           )  
SAULO CHAMLOMO           ) ..... PLAINTIFF  
NATHAEL CHAMLOMO        )  
  
  Versus  
SOSPETER N. NDALAHWA ..... DEFENDANT

R U L I N G

THEMA, J:

The plaintiffs in this case filed their joint plaint on 16th November 1999, after being granted extension of time by the Minister responsible, for legal affairs in terms of Section 44 of the Law of Limitation Act. The suit being founded on tort (malicious prosecution) had to be granted extension of time at the expiration of the normal period of three years. It is on record that the Minister responsible for legal affairs extended the period of limitation for the plaintiffs to commence the proceedings by a period of one and half years with effect from 25th day of September 1999. It is obvious that when the plaint was filed on 16th November 1999, the suit was very much within the prescribed time. This then answers without any shade of doubt the preliminary objection raised by Mr. Ndalahwa the defendant that the claim is not time barred. The defendant's point of preliminary objection is one of the issues for determination in this ruling, and is accordingly disposed of.

It is further on record that the plaintiffs in reply to the written statement of defence also raised a point of preliminary objection on a point of law that defence filed be rejected for having been filed out of time. In support of the objection, Mr. Galikano learned advocate for the plaintiffs, argued that the defendant was served on 11th January 2000 and by 19th January 2000 no written statement of defence was in place and that despite a further gratuitous extension up to 11/2/2000 the defendant waited until 15/2/2000 to file the defence. It is the plaintiff's submission that the late filing of the defence and without leave of the court renders the defence valueless, and should be rejected. In reply the defendant stood defenceless and conceded that in deed he failed to file his defence as ordered due to his absence from Dar es Salaam and was not properly advised upon his return as to the proper course of action to take. Defendant implores the court to allow the defence filed so that the case proceeds to trial in order to determine the suit on merit.

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Well the defendant's plea is quite inviting, but it is desirable that the law must take its course. Indeed the defendant's plea would have been acceptable if the defendant was seeking leave to file his defence out of time. The situation in which the plea is made is different. In terms of Rule 14 (1) of Order VIII of the Civil Procedure Code as amended by G.N. No. 422/1994 the court is mandatorily required to either pronounce judgment against the defendant or make such order in relation to the suit or counter claim as the case may be, as it thinks fit upon defendant's failure to present to present a written statement of defence. Given the nature of the case I am of the considered that in <sup>view</sup> interest of justice will be served if the plaintiff proceeds to prove the case ex parte. Accordingly it is ordered that the plaintiff proves the case ex parte.

*[Signature]*  
S. IHEMA  
JUDGE

COURT: Ruling to be delivered by DR/HC on a date to be fixed.

*[Signature]*  
S. IHEMA  
JUDGE

7/6/2001:

CORAM: F.S.K. Mutungi - DR/HC  
For the 1st Plaintiff  
For the 2nd Plaintiff / Mr. Galikano  
For the Defendant - Absent  
CC; Maurice.

COURT: Ruling read this 7/6/2001 in court before F.S.K. Mutungi DR in the presence of Mr. Galikano for the plaintiffs but in the absence of the Defendant though saved.

F.S.K. Mutungi  
DISTRICT REGISTRAR  
7/6/01

ORDER: Mention in chamber on 3/8/2001 for necessary orders.

F.S.K. Mutungi  
DISTRICT REGISTRAR  
7/6/2001