

IN THE HIGH COURT OF TANZANIA
AT MWANZA

HC. CIVIL APP. NO.17 OF 2005

(Originating from Mwanza D/Court Civil Case No.88/1998)

1. MWANZA CITY ENGINEER }
2. MWANZA CITY COUNCIL }APPELLANTS

Versus

ANCHOR TRADERS LTD..... RESPONDENT

23/11/2006 & 8/12/2006

JUDGMENT

RWEYEMAMU,J:

This case has had a long history in court; and from my decision below, it is yet to reach closure.

The respondents (hereinafter plaintiffs) filed a suit in DC Civil Case No.88/98 and obtained an ex parte Judgment on 24/5/2002. That judgment was set aside on 19/7/2002, and the defence commenced on 9/9/2002, after a couple of adjournments for a variety of reasons the defence was set for 8/7/2003. This was before a different trial magistrate. That was again followed by various adjournments some moved by the court, and others by the parties. Finally on 31/8/2004, Counsel for the appellants (hereinafter defendants) submitted that the life span of the case had expired. Apparently, the life span of the case –speed track IV, had expired on 10/11/2001.

Before proceeding, it is best I reveal more information from the court record regarding what transpired before the case life span expired. I shall refer to only parts of the record. On 6/4/2001 a date set for continuation of hearing of the plaintiff's case, the defendants were present but the case was adjourned due to absence of the plaintiff. An *ex parte* judgment was written on 24/5/2002 and the same set aside on 19/7/2002 by the same magistrate - Kasonso DM. Ultimately on 9/9/2002 the defendants commenced their defence and by 14/11/2002 two defence witnesses had testified. The case was adjourned several times again for a variety of reasons and ultimately taken over by a different magistrate- David RM; adjourned several times until 31/8/2004 when counsel for the defendant raised the issue of expiry of the case life span.

The trial magistrate ruled in brief that, since the plaintiff had closed its case within the prescribed time span it was the duty of the defendant to apply for extension of time and failure to do so under Order VIII C rule 6 as amended by GN 422, amount to failure to file defence. The defendants were dissatisfied and on 2/11/2004 expressed intention to appeal that ruling. It is not clear if to date that ruling has been appealed.

Subsequently to that ruling, the trial magistrate composed a judgment on 5/7/2005 which was delivered on his behalf on 22/8/2005; which judgment is subject matter of this appeal. I should point out on the outset that the following paragraph from the said

gment is not correct in view of the details from court proceedings
ve given above:

*"The defendant's were supposed to commence their defence case on 11/6/2001
but they never attempted to defend their case at all to date. Because of failure to
enter defence their counter claim which is treated as a cross suit is dismissed in
total" (Emphasis mine)*

There are a number of legal issues raised by the parties in this
appeal but I will deal with only one, which in my opinion is
fundamental and in itself disposes of the appeal. That issue is
centers on the application of the case track system under Order VIIIA
rule 4 of the Civil Procedure Code (CAP 33 R.E. 2002). Simply stated
the issue is who between the parties has a duty to apply for
extension of time once the case life span has expired.

According to the trial court, because the life span expired after
closure of the plaintiff's case, the duty to apply for extension of time
shifted to the defendant and failure to do so amount to failure to
enter a defence. Apart from the peculiar facts of this case where the
defence had actually been permitted to commence defence after
expiry of time; the trial court conclusion seems to be premised on a
principle that the plaintiff's case is complete after closure of their
case but before defence. My understanding of the law is that the
plaintiff's case is not done until the whole case is done.

I do not interpret the law as meaning that once a life span of
the case expires whoever has had his day in court until that stage

wins, unless the other party moves the court for an extension of time. It would be strange if that was so, particularly in circumstances similar to the present where the case overshot its life span due to adjournments moved by both parties and sometimes the court.

In my opinion, after 10/11/2001 when the life span of the case expired, there was no case before the court upon which the defence could proceed or an *ex parte* judgment could be written in the absence of an extension order.

In view of my said conclusion I find that proceedings after expiry of time were a nullity, they are hereby quashed including the appealed judgment. Whoever desires the case to proceed should move the court by taking appropriate steps. No orders are made as to costs.

R. M. RWEYEMAMU

JUDGE

8/12/2006

ORDER

File sent to the DR for delivery of judgment to the parties.

R. M. Rweyemamu

JUDGE

8/12/2006