

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY**

**AT MWANZA**

**CIVIL CASE NO: 3 OF 2001**

**ZAKARIA KABENGWE.....APPLICANT**

***VERSUS***

**THE EDITOR MSANII AFRICA.....RESPONDENT**

**R U L I N G**

**8/11/2007 & 18/4/2008**

**SUMARI, J.**

This is an application by the applicant/plaintiff Zakaria Kabengwe applying for extension of life span of civil case no.3 of 2001 which filed in this court on 6/2/2001. The said civil case was first mentioned on 23/2/2001 and both parties were not present. It was again mentioned on 2/4/2001 this time both parties appeared. By then the defendant/respondent had already filed written statement of defence on 28/2/2001. The matter kept on mentioned till 19/11/2001 when pre-trial scheduling conference took place and the case assigned speed truck 3. Mediation by 10/5/2002 and if mediation failed mention before the trial judge on 13/5 2002. It happened that mediation failed therefore mention before trial judge done as scheduled on 13/5/2002. Likewise on 17/11/2003 the matter was mentioned before D.R and both parties were present. The matter was fixed for hearing on 20/6/2002 which date both parties appeared before Ag D.R, Kadaso, who fixed mention on 1/7/2002. On 1/7/2002 plaintiff's advocate appeared before Mlay, J, and requested

for hearing date. The matter set for hearing on 5/9/2002 which date again defendant and his advocate were absent. Hearing fixed to be 15/10/2002, on that day both parties appeared before D.R and hearing set to be on 13/2/2003. From 15/10/2002 the matter dragged somewhere till 6/9/2004 almost a year later and was mentioned before D.R. where both parties appeared and plaintiff complained bitterly on the delay envisaged in the case. The case file was however, placed before the Judge Incharge who transferred the case to the District Court of Mwanza on 18/1 2005. Again on 9/3/2005 this court orderd the matter to be finalized in the High Court. So the record was retrieved from the District Court. The matter kept on mentioned till 26/5/2005 when placed before Mchome,J and life span of the case extended to another 12 months, then mention fixed to 14/7/2005. On 14/7/2005 the matter fixed for mention on 11/8/2005 before D.R. to assign court assessors for the case. On 11/8/2005 D.R. assigned assessors and set the case for mention on 25/8/2005 before the trial judge. On 25/8/2005 assessors were absent so His lordship Mchome,J fixed the matter for mention to 31/8/2005; which date the assessors were absent again. This time trial judge fixed the matter to come for mention again on 6/9/2005. On 6/9/2005 only two assessors appeared instead of three. Mention again was fixed to 20/9/2005 for the 3<sup>rd</sup> assessor to be served. On 20/9/2005 all parties and assessors were present but the plaintiff objected to one assessor. The trial judge adjourned the case and ordered the D.R. to assign another assessor and mention was set to 1/11/2005, which date both parties were present before the trial judge and case set for hearing on 4/4/2006. On 4/4/2006 both parties were present

before D.R. who set hearing on 24/10/2006. On 24/10/2006 both were present before D.R and hearing was set to 1/3/2007.

On 1/3/2007 the case file re-assigned to me because trial judge was transferred. This date the advocate for defendant was absent as was engaged in the CAT sessions. I fixed the case to come for hearing on 29/5/2007 but on that day I was on safari, abroad (Dublin) so the matter was mentioned before D.R. The matter fixed for hearing on 19/6/2007. Prior this date on 13/6/2007 the applicant/ plaintiff filed this application which is been objected by the respondent.

Hearing of the application set on 25/6/2007 when applicant prayed to reply on P.O. Hearing again set to 21/8/2007 which date I was engaged in the High Court Sessions. The matter was fixed for mention on 8/11/2007. On 8/11/2007 by consensus the parties agreed to argue the application by way of written submissions.

Respondent's submission on the preliminary objection is referring Order XLIII Rule 6 of Civil Procedure Code that the applicant was supposed to file his application within 21 days after the expiry of the life span of his case. For him the applicant did not comply to that requirement and the life span of his case had expired so his application is hopelessly time barred.

In reply applicant submitted that going by the Civil Procedure Code, Cap. 33 of the Laws (R.E.2002) (CPC) the alleged period of 21 days is not provided for and therefore the extension is catered for under section 93 of CPC. Therefore the application is not out of time.

It is further argued by the applicant that even if the court were to find out that the application is out of time, the applicant should not be penalized for that because the failure to finalize the suit within time was not caused by the applicant's negligence or willful conduct of the applicant.

As it can be reflected in this ruling, I have purposely narrated down what transpired throughout the proceedings as to when the case in issue was filed to the date this application was argued. I have no doubt and I'm satisfied that there's no single day that the commencement of the case failed due to reasons caused by the applicant. Most of the times adjournments were due to judges absence as well observed by the applicant. In some instances respondent and his counsel for no reasons could not enter appearance. I therefore consider the facts deponed in the applicant's affidavit to be true.

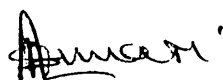
Now coming to the argument raised by the respondent that the applicant filed his application in contravention of O.XLIII R. 6 of CPC and therefore the same is time barred.

I must point here for the benefit of the applicant that it is true that his application is time barred as submitted by the respondent. Again it is not true that the alleged 21 days is not provided for in the CPC as submitted by the applicant. The provisions of **O.XL111 R.6** of Civil Procedure Code, Cap.33 (R.E 2002) which the applicant has brought under it, his application clearly provides under the proviso that :

**Order XL111 Rule 6 :-** The Court may extend ....."provided that an application for extension of time by the party concerned within twenty

one days of the expiration of the prescribed time unless otherwise provided by the relevant rule". It is therefore plainly clear that CPC provides for the period of 21 days and not otherwise as submitted by the applicant. The applicant's submission that the extension is catered for under S.93 of CPC is unfounded. This section clearly provides for the court's discretion to grant such applications and not as of a right to the applicant. However, owing to the circumstances of this case and the fact that I am satisfied that there's no single day that the commencement of the case has failed due to reasons caused by the applicant, the provisions of S.93 of CPC are invoked.

For the foregoing reasons the objection is overruled. That being the position and in avoidance of more delay, in the interest of justice the applicant's application for extension of life span of Civil Case No: 3 of 2001 is hereby granted. Costs to follow events.



**A.N.M. SUMARI**

**JUDGE**

*At Mwanza*

*Date: 18/4/2008*

**Delivered this 18<sup>th</sup> day of April, 2008 in the presence of all parties**