

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

CIVIL CASE NO. 04 OF 2008

DISHON JOHN MGAYA PLAINTIFF

Versus

NYERERE DISIGNATED

DISTRICT HOSPITAL - MUGUMU RESPONDENT

RULING

G. K. RWAKIBARILA, J

The plaintiff **Dishon John Mgaya** averred, **inter alia**, in paragraph 2 of his reply to the Written Statement of defence that the written statement of defence which the defendant filed should be dismissed on grounds that it was filed out of time.

The background of this matter is that plaintiff instituted this suit on 13.02.2008. And on 12.03.2008, a copy of the plaint was dispatched to the defendant t/a Nyerere Designated District Hospital-Mugumu vide an EMS which is Exhibit A1 in this application. Also enclosed in that Exhibit A1 were an "***Initial Notice***" and a "***Summons to Appear***" constituting Collective Exhibit R1.

This plaintiff during hearing of this application did not refer to any Law in which he based his prayer for dismissal of the written statement of defence. But learned counsel for defendant Mr. Magongo in his reply pointed out that so long as defendant was served a summons to appear which is in compliance with Order 8 Rule (1) of the Civil Procedure Code, Cap. 33 R.E. 2002 plaintiff was not justified to make an application like the current one.

That Rule 1(1) of Order 8 of **The Civil Procedure Code** (supra) provides that:

"Where a summons to appear has been issued, the defendant may, and if so required by the court shall, within seven days before the first hearing, present a written statement of defence."

So that in view of that Rule 1(1) of Order 8, it was not proper for plaintiff to rely on such a background to pray for dismissal of the written statement of defence. Then this application is rejected to wit, hearing of this case shall follow other stages in the sequence.

For purposes of clarification, this suit is at the stage of mediation which was stayed for purposes of entertaining this

application. Therefore the mediation should from this stage continue before the mediating Hon. Judge Mr. K. M. Nyangarika, J.

Costs for this application alone to follow the event.

Sgd: G. K. Rwakibarila
JUDGE
02.08.2009

Date: 04.08.2009

Coram: G. K. Rwakibarila, J

Plaintiff: Present

Defendant: Absent

B/C: Leonard

Court:

Ruling delivered at Mwanza this 4th day of August, 2009 at presence of plaintiff but absence of defendant.



G. K. Rwakibarila
JUDGE

At Mwanza
04.08.2009