

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 281 OF 2008

**HUSSEIN OMARY MWASA APPLICANT/PLAINTIFF
VERSUS
MOHAMED AMRI MWINYI 1ST RESPONDENT/ DEFENDANT
THE REGISTERED TRUSTEES OF MASJID
OMAR IBN KHATTAB2ND RESPONDENT/DEFENDANT**

R U L I N G

A.F. Ngwala,J.

When this suit was called for hearing of the Plaintiff's case, Mr. Njama, learned advocate for the 1st and 2nd Defendants prayed for among other things an order to strike out this suit because it has outlived its speed track.

Mr. Msuya learned counsel for the Plaintiff instead prayed for an order of departure from the speed track instead of striking out the suit. In

reply, Mr. Njama averred that since the prayer for departure was not made within the diligent time, the suit ought be struck out

The records of this suit are clear. The suit was filed on 19th November, 2008. The first Pre Trial Conference was conducted on 14/9/2009 and the suit was scheduled to Speed Track III. Under the provisions of Order VIIIA of the Civil Procedure Code, [Cap. 33 R.E. 2002] Speed Track III is confined to 14 months after the scheduling conference is conducted.

The prayers to strike out the suit for being out lived by the Speed Track was made on 19/03/2012. This was about 30 months after the suit was scheduled to Speed Track III. The suit therefore is out of its track. The question now is; whether the suit ought be struck out for being out of the Speed Track??

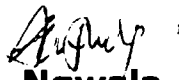
Before I conclude on the above question, I have to pose hear and look at the aims of the scheduling conference, especially the first scheduling conference or the 1st Pre Trial Conference. Leaving behind discoveries of documents, interrogatories or applications to the court and

stating the number of witnesses each part intends to bring, the 1st scheduling conference sets the time limit within which the suit is to be tried. It aims to ensure that a dispute progresses as expeditiously and economically as possible to a fair settlement.

It is therefore my considered opinion that a suit cannot be defeated only on the reason that it is out of the Speed track and the Plaintiff did not pray for extension of the speed track. The intention of the scheduling conference is not to make a time limit for a suit to be in Court, but to put an alert to the parties, their advocates if any and to the court on the intensity of trying the suit. This may be fast (speed track), moderate (Speed tracks two and three) and slow (speed track four).

This speed of trial depends on the nature of the case. In the circumstance of this case. I cannot struck out the case on the reasons of running out of the Speed Truck. The suit may lose its speed track due to interlocutory applications, mediation and tight Court calendar etc. Striking of the suit will not prohibit the Defendant to file a fresh suit against the same Plaintiff and the subject matter.

In the end result, the prayer raised by Mr. Njama must fail. The suit should continue with full trial as it was scheduled. I make no order as to costs.


A.F. Ngwala,
JUDGE,
7/11/2012

Delivered in Court this 7th day of November, 2012

A.F. Ngwala,
JUDGE,
7/11/2012.

07/11/2012.

Coram : A.F. Ngwala,J.

For Applicant : Yudathadei

For the 1st Defendant : Present

For the 2nd Defendant : Present

Cc: Jane.

Mr. Kasika; I have just been instructed to handle this matter by the Plaintiff, who has informed me that the matter is for a Ruling.

Mr. Kusarika: Madame Judge, I also hold the brief of Mr. Njama for the Defendant. Mr. Yahaya Njama is sick and therefore he is unable to appear in court today.

Court: Ruling delivered in the presence of the Plaintiff and the 1st defendant who is also holding the brief of Mr. Njama.

Court; Hearing on 11,12,13 & 14/3/2012.

**A.F. Ngwala,
JUDGE,
07/11/2012.**