

**IN THE HIGH COURT OF TANZANIA**  
**DAR ES SALAAM DISTRICT REGISTRY**  
**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 310 OF 2017**

(Arising from Civil Case No. 16 of 2012)

**BLASTON JOSIA.....APPLICANT**

**VERSUS**

**THE INSPECTOR GENERAL OF POLICE.....1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

**MKASIMONGWA, J.**

The Applicant is also the plaintiff in Civil Case No. 16 of 2012 instituted against the Inspection General of Police (IGP) and the Attorney General claiming for a sum of Tshs. 150,000,000/= being compensation for injuries he sustained in the course of employment in the Defendants' organs. He applies for an order of the court allowing him to proceed with the suit ex-parte.

The Application is made by way of chamber summons filed under Order IX Rule 6 (1) (i) of the Civil Procedure Code (Cap. 33 R.E 2002) and it is supported by the Applicant's own affidavit. In the affidavit the Applicant's substantive averment is as follows:-

*“That this Honourable court me on ordered 11<sup>th</sup> May, 2017 to file the Chamber Application seeking an order of the court that the matter to proceed ex-parte as the adverse parties have been reluctant in attending the court sessions as scheduled”*

The Respondents object to the Application. They filed Counter Affidavit in which the deponent one Jacqueline Kinyasi, avers that the Defendants had been appearing in court up to 16/6/2016 when the case ceased to be tried by Kibela, J. They were never being notified of the re-assignment of the suit to another trial judge till on 14/6/2017 when were served with this application.

On the date this matter came up for hearing, the Applicant appeared in person whereas Mr. Juma Ramadhani - Principal State Attorney appeared on behalf of the Respondent. In his submission, the Applicant stated that though were duly served, the Defendants in Civil Case No. 16 of 2012 did not appear in court on 30/9/2016, 3/11/2016, 25/10/2017 and 12/12/2017 hence this application which he prays the court to be granted.

In response to the submission, Mr. Ramadhani (PSA) stated that the Respondents – Defendants in Civil Case No. 16 of 2012 filed their Written Statement of Defence on 10/5/2012 on which date they appeared in court represented by Mr. Karim Rashid – State Attorney. The matter was again called before the court on 5/7/2012, 16/10/2012 and 20/3/2014 on which dates the Defendants were represented by Mr. Mwihitasi, Mr. Mboya and Mr.

Lisulile, State Attorneys, respectively. Mr. Ramadhani stated further that, on 31/7/2014 when the matter was called before the court for mediation, the plaintiff was absent whereas the Defendants were represented by Mr. Lukosi (S/A) and the Mediation was marked failed. On 10/3/2015, 23/9/2015 and 23/10/2015 when again the suit was called to the court all the Defendants was present represented by Mr. Chang'a, Mr. Nyakiha and Mr. Chang'a State Attorneys, respectively. The defendants were again present in court on 11/4/2016 when Miss Paulina Mdendemi (S/A) appeared in court on behalf of the Defendants. The suit was later was transferred from the trial Judge (Kibela,J) and upon being served the Defendants found the same to have been set for mention on 17/7/2017 and from there they lost track of the matter. Mr. Ramadhani contended that they have attempted to show a good cause why the order sought in this application should not be granted. He prays the application to be dismissed.

In a short rejoinder the applicant submitted that, it has been submitted by the Respondents that the defendants in Civil Case No. 16 of 2012 were not informed of the transfer of the suit from Hon. Kibela, J. There are but summonses which prove the fact.

That is all what is submitted by the parties. To start with, let me go through the affidavit filed in support of the application. It is averred therein that this application was filed adhering to the courts order dated 11/5/2017. Going by the records, the order was given on 9/5/2017 and not 11/5/2017 as stated in the affidavit.

Order IX Rule 6 (1) (i) of the Civil Procedure Code (Cap. 33 R.E 2002) under which this application is brought reads as follows:-


*“6 (1) Where the plaintiff appears and the defendant does not appear when the suit is called for hearing then:-*

*(i) If the defendant is the Attorney General and it is proved that the summons was duly served, the plaintiff may applying for leave to proceed ex-parte and the court shall there upon fix a day for hearing of the application and shall direct that notice of the application and of such day be given to the Attorney General”*

Going by the provision of the law above for an application that the suit proceeds ex-parte against the Attorney General to succeed it is necessary to show among other things that the defendant, (the Attorney General) was duly served with a summons, and that, has not appeared when the suit is called for hearing. In the affidavit filed in support of the application, the Applicant/Deponent does not aver to the effect that the Defendants were served. In the oral submission, he stated that there were summons issued which allegation has not been substantiated by evidence. The respondent on the other hand shows that they were not served. Suffice to say here that, the Defendants were not served with summons the premise which renders the application made under Order IX Rule 6 (1) (i) of the Civil Procedure Code [Cap.33 R.E 202] premature.

With what is discussed here above this application is far from success and it is hereby dismissed. No order as to costs is made.

Date at Dar es Salaam this 11<sup>th</sup> day of May, 2018.

  
E. J. Mkasimongwa

**JUDGE**

**11/5/2018**