

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

AT DAR ES SALAAM

CIVIL CASE NO. 206 OF 2011

TARIMBA ABBASPLAINTIFF

VERSUS

THE GUARDIAN LIMITED.....1ST DEFENDANT

THE EDITOR, TAIFA LETU NEWSPAPER.....2ND DEFENDANT

RULING

MKASIMONGWA, J.

By the Scheduling Order of the Court made on 14/2/2013 this suit was assigned to a Speed Track 4, a period of which expired on 13/2/2015. Following the prayer made on 13/8/2015 by the plaintiff's advocate the Court departed from its scheduling order and a speed track 4 was substituted to run from that very date. Certainly the newly set speed track expired on 12/8/2017. Again acting for the plaintiff Mr. Kizuguto, learned advocate came up with an oral application for an order extending the speed track. He did that on 24/10/2017 and Mr. Ngalo (Advocate representing the defendant) objected to the prayer. He submitted that, an application for extension of a speed track ought to have been made within sixty days from when the speed track expired. As the speed track expired a

12/8/2017, the plaintiff should have made the prayer/application by 12/10/2017. After that date the plaintiff should have first sought for and obtained leave to apply for the order out of time, in which application he could have stated the reasons for the delay. Referring to the case of **Reginald Mengi vs. Yusuf Manji; Civil Case No. 91 of 2006**, Mr. Ngalo submitted that where a speed track has expired the suit to which the expired speed track was assigned deserves for an order striking it out. Based on those submission and the authority cited Mr. Ngalo prays the court it strikes out the suit at hand.

On his part Mr. Kizuguto submitted that the application for extension of the speed track is orally made in terms of order XLIII Rule 2 of the Civil Procedure Code [Cap.33 R.E. 2002]. He added that matters pertaining to speed track are not matters going to the root of the case. Order VIIIA Rules 3 to 5 of the Civil Procedure Code are only intended to expedite cases and that an application for extension of a speed track can be made at any time by any of the parties and order issued by the court. The learned advocate referred the court to the decision in the Case of the **African Medical and Research Foundation vs. Steven F. Emmanuel and Others, Land Case No. 17 of 2011.**

Mr. Kizuguto submitted further that expiry of the speed track was not caused by the plaintiff. The speed track expired on August, 2017 when the parties were in the middles of the discussion held with a view to settle the matter. It cannot be solely attributed to the plaintiff. As to the case cited by his learned brother, Mr. Kizuguto submitted that the same was decided in 2005 and it was taken into consideration when Teemba, J. decided the

later case. Mr. Kizuguto prayed the court therefore that since the court may grant extension of a speed track even without any application being made to that effect and since the expiry of the speed track cannot be solely attributed to the plaintiff the objection be overruled and application to be allowed. This was also cemented by submissions by Mr. Kiondo, advocate who worked together with Mr. Kizuguto in this matter and prayed the application be granted on ground of the interest of justice in terms of Article 107A (2) of the Constitution of the United Republic of Tanzania and Section 93 of the Civil Procedure Code [Cap 33 R.E. 2002].

In a short rejoinder Mr. Ngalo submitted that it is correct that Order XLIII Rule of the Civil Procedure Code allows for oral application. In this matter the applicant has not addressed the court on his submission that the application is time barred. It has only been submitted that an application for extension of a speed track can be made at any time. The question here is why we should have the Law of Limitation.

Mr. Ngalo also submitted that it is true that either party to the proceedings can apply for extension of a speed track. The decision cited (Twarib, J.) had discussed three schools of thought and it is clear that there are conflicting decisions in this regard. The cited authority is not to the effect that the speed track expiry does not necessitate striking out of the suit.

As regards to the negotiations made out of court Mr. Ngalo submitted that such negotiations do not check limitation of matters that are in court.

The Application for extension of a speed track could have been made the application notwithstanding the negotiations.

As to the submissions that the application be granted on ground of interest of justice in terms of Article 107A (2) (e) of the Constitution of the United Republic of Tanzania and section 93 of the Civil procedure Code Mr. Ngalo submitted that this is not the occasion for this case to resort to the Articles of the Constitution. The Article cannot be invoked where there is a specific substantive or procedural law governing the issue. Mr. Ngalo reiterated his prayer to have this application dismissed.

In considering the matter, I find it being not disputed that in this suit the set speed track got expired on 12/8/2017. On 24/10/2017, the plaintiff's counsel came up with an oral application for extension of the speed track. The Application was made under Order XLIII Rule 2 of the Civil Procedure Code. It is said that it is necessary that the speed track be extended for the same was expired from the fact that the parties were in the middle of discussion for the amicable settlement of the matter. It is important to note here that any discussion held by the parties with a view to reaching at amicable settlement of the matter does not stay time of the speed track set by the court from running against the parties. Where parties engage themselves in a talk to settle their matter out of court, they should do so while observing all orders of the court and in particular the scheduling conference order.

In this matter I recommend to plaintiff's counsel for making the applicant for extension of the speed track. This is because where the speed

track has expired and the court has not *suo motto* extended it, it is not a matter for the parties to remind the court that the speed track has expired and therefore the same should be extended. There must be an application by either of the parties to have the speed track extended. Mr. Kizuguto made such an application orally in terms of Order XLIII Rule 2 of the Code. An application for extension of a speed track made under Order XLIII Rule 2 of the Civil Procedure Code is not an automatic right a party to the case has. The Application is subject to the Law of Limitation in terms of item 21 of Part III of the schedule to the Law of Limitation Act [Cap. 89 R.E. 2002]. Such application must be made with sixty days from the right to make it accrued. Going by the dates in this matter, this application was made after expiration of the period of sixty days. The same was so brought without first seeking and obtaining order of the court extending the time of limitation under Section 14 (1) of the Law of Limited Act. As such the application for extension of the speed track is dismissed for the same is time barred.

As the speed track in this matter has expired, this suit is incompetent in court and for that reason the same is hereby struck out. Each party should bear his own costs.

Dated at Dar es Salaam this 2nd day of January 2018.




E. J. Mkasimongwa

JUDGE

02/01/2018