

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

**CIVIL CASE No. 51 OF 2019**

**ABBASALI AUNALI KASSAM.....APPLICANT**

Versus

**RENT A CAR LTD.....1<sup>st</sup> RESPONDENT**

**CHANDNI ABBASALI KASSAM.....2<sup>nd</sup> RESPONDENT**

**ZAHRA ABBASALI KASSAM.....3<sup>rd</sup> RESPONDENT**

**RULING**

26/7/ - 24/9/2019

**J. A. De- Mello, J;**

The Plaintiff is claiming against the Defendants jointly, for;

- (a) Declaration that, the Plaintiff removal from Directorship was illegal ab initio.**
- (b) The Third Defendant to pay to the Plaintiff Tanzanian Shillings Two Hundred and Fifty Million (TZS 250,000,000.00) being consideration of share transfer.**

- (c) The Third Defendant to pay interest of 20% per annum from the date when payment was due to the date of judgement.**
- (d) The Third Defendant to pay interest of 12% Court's rate from the date of Judgment till date of final payment and full payment of the amount claimed.**
- (e) ALTERNATIVELY, the third Defendant to surrender back all shares sold to her for failure to pay money.**
- (f) General Damages**
- (g) Costs of the Suit**
- (h) Any other further order(s) as may be just under the circumstance.**

A **Notice of Intention** to raise **Preliminary Objection on Point of law** is on record that;

- 1. That, the Written Statement of Defence filed by the Defendants on the 27<sup>th</sup> of May, 2019 is 'Time Barred' in that it has been filed after 23<sup>rd</sup> of May, 2019 without leave of the Honorable Court.**

In his written submissions supporting the said objection, **Counsel Sabas Kiwango** made reference to the law governing **Written Statement of Defence**, as stipulated under **Order V Cap. 33** explicitly, providing for **twenty one days (21) days** from when service of summons is effected. In defiance of filing on the **23<sup>rd</sup>** from the **2<sup>nd</sup>** of **May 2019**, the Defendants have contravened **Order VIII Rule 1 (1)** of **Cap. 33**, he observes. However, and, contradicting on which way to adopt, as to whether to **Struck Out** or **Ex-Parte** hearing, Counsel drew the Court to **Order VIII Rule 14 (1)** of **Cap. 33**.

In his opening remarks categorically opposing the objection, **Counsel Muccadam**, loudly states it to be lacking in merits. That, the order of Court that time to file **Written Statement of Defence** is still open from the **2<sup>nd</sup> of May, 2019** was not practical unless and, until service has been duly effected on them. This being a contentious matter and, for proof, the objection is misconceived **Counsel Taheer Muccadam** asserts. Further that, record has it that, **Counsel Kalua** did furnish a blank plaint to the Defendant while the matter was mentioned on the **9<sup>th</sup> of May 2019** which if agreed, leads to the **twenty (21) days** on the **23<sup>rd</sup> of May**. No Court summons have been served, acknowledged and signed, in

accordance with the law under **Order VIII Rule 14 (1)**. Unless and, until **Order V** is complied to, then even **Order VIII Rule 14 (1)** becomes irrelevant, he concluded, as he referred the celebrated case of **Mukisa Biscuits** and that of **Sugar Board of Tanzania** with no citation, terming the objection a '**fallacy**'.

Let me at this outset, refer to what record on Court file reveals, in addressing this controversial computation of time, which is at stake now. On **21<sup>st</sup> of March, 2019** was when I admitted the suit in absence of Parties, as I ordered for service to the Defendant. On the **9<sup>th</sup> of May**, both sides were duly represented by **Counsels, Kalua and Taheer**, respectively. Record further indicates what **Counsel Kalua** had with regard to service, to have been effected and, precisely so, on the **2<sup>nd</sup> of May, 2019**. **Counsel Taheer** admitted the same but with reservations that, he was on safari and, instructed yesterday, meaning the **8<sup>th</sup> of May 2019** to be able to comply. The Court, counting from the **2<sup>nd</sup> of May** observed time to still available for meeting the **twenty one (21) days** and not from the **9<sup>th</sup>**. The Court even went further cautioning **Counsel Muccadam** to '**observe that and comply**'. On the **25<sup>th</sup> Counsel Kalua** assisted by **Counsel Kiwango** submitted to have filed an objection and

prayed for it to be heard. Written submissions was ordered and, here we are.

With all sincerity and, due respect to **Counsel Muccadam**, the order on **9<sup>th</sup> of May** was indeed not related with filing the **WSD** but an emphasis on it be lodged computing for the date of service of **2<sup>nd</sup> of May** and, which he admitted and apportioning delay for reasons of being on safari. The observation by Court was and, as stated by **Counsel Kiwango** the **23<sup>rd</sup> of May 2019** it is from the **2<sup>nd</sup> of May** when service was effected. The filing on the **27<sup>th</sup> of May 2019** and, without **Leave** is unlawful. If at all Counsel wants the Court to believe service was improper the only forum was on the **9<sup>th</sup> of May, 2019** to oppose what **Counsel Kalua** submitted. He never opposed to have been served appropriately or otherwise. Service was in order and, the reason more the **Written Statement Defence** was filed.

However and, in the wake of the development of the law, the **Written Laws (Misc. Amendment) No. 3 of 2018**, with the advent of the **Overriding Objective Principle** emphasizing Courts to deal with cases justly having regard to substantive justice. The three days difference, is not that fatal to be accommodated. With this and, which I even embraced in

the case of **Yakobo Magoiga Gichere vs. Peninah Yusuph, Civil Appeal No. 55 of 2017**. It is on this only regard that, I overrule the objection as I caution **Counsel Taheer** not to distort and, put words to Court's order, which was clear and, certain.

Let the hearing of the suit in its substantive form, in the interest of justice proceed, as I exercise my discretion wisely and, judiciously.

Ordered accordingly and, costs granted as prayed.

  
**J. A. De- Mello**

**Judge**

**24/09/2019.**