

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

CIVIL CASE NO. 115 OF 2017

*(Arising from the decision of the District Court of Kinondoni in Matrimonial Appeal No. 59 of 2019,
Hon. H.A. Kikoga - RM, dated 8th April, 2020)*

FREDERICK TLUWAY SUMAYE.....Plaintiff

VERSUS

THE EXECUTIVE EDITOR, dira ya Mtanzania Newspaper.....1st Defendant

**MR. MUSSA MKAMA
(News Editor, Dira Ya Mtanzania.....2nd Defendant**

**MR. JOSEPH SABINUS
(Features Editor Dira ya Mtanzania Newspaper).....3rd Defendant**

**Dira Newspaper Company Limited
(Owners and Publishers of Dira ya Mtanzania Newspaper)....4th Defendant**

PROCEEDINGS

14/3/2022

Coram : Hon. A. R. Mruma,J.

For the Plaintiff : Mr. Sauli, Sauli for the Plaintiff

For the 1st Defendant } For the 1st Absent Defendant Mr. Andrew
Kamonyele

For the 2nd Defendant } Absent

For the 3rd Defendant } Absent

For the 4th Defendant } Absent

CC: Delphina

Mr. Sauli Sauli:

Today the matter was set for hearing but our first witness who is the key witness went outside the country for medical checkup. We managed to write to this court on 11th March 2021 to inform the court about the absence of this witness. The said witness will be out of the country for 14 days. We pray for another hearing date – outside the 14 days period he will be out of the country.

Mr. Kanonyele:

My Lord we received a letter showing that the plaintiff has travelled to U.A.E. We have no objection to the prayer. If it pleases you we pray to proceed by way of witness statement, as per Order XVIII Rule 2 of GN. N. 761 of 2021.

Court:

Prayer for adjournment on the ground that the plaintiff who is the 1st witness is absent and has travelled outside the country for medical checkup is rejected for the following reasons:

1. There is no evidence whatsoever to prove that the witness has actually travelled outside the country. A person travelling outside the country must have an air ticket, visa, boarding pass etc, as

evidence of the safari. In the present case counsel for the plaintiff has produced none of the above documents to prove that the plaintiff has travelled outside the country.

2. Secondly there is no law which obliges the plaintiff to commence his case by bringing a key witness or himself as he first witness. If the plaintiff had wanted hearing of the case to commence today he would have brought any witness available to start the plaintiff case.


Having failed to procure a witness today, the plaintiff has failed to comply with the directions of the court made on 14.12.2021 which fixed this case for hearing today, and in terms of Rule 21(a) of Order VIII (GN No. 381 of 2019), his suit has to be dismissed. Accordingly.

I order.

ORDER:

- Civil Case No.115 of 2017 is dismissed.
- As the 4th Defendant did not object the prayer for adjournment of the case, no orders as to the costs are made.




A.R. Mruma

Judge

14/3/2022