

TANZANIA / JUDGMENT

20160225 TZHC Arusha

COURT
TZHCDECIDED
25 February 2016

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY OF
ARUSHA AT ARUSHA CIVIL CASE NO. 27 OF 2015 ST .

1. M/S EDWAARD SANGAU 1 PLAINTIFF
2. OTHUMAN MANDIA 2No PLAINTIFF
3. TARANGEI MOIYO 'i. 3Ro PLAINTIFF
4. LONGUTUTI LEINGOSI .. . i 4TH PLAINTIFF VERSUS THE MONDULI
DISTRICT COUNCIL. DEFENDANT

RULING

DR. M. OPIYO, J. This is a ruling in relation to the preliminary objection by the defendant, who raised three points of law that;

1. That the plaintiff have not met the statutory demand of serving the defendant the notice of thirty days
2. That the defendants have violated the order of this court dated 26 th June 2015 in which they were ordered to re-file the plaintiff within fourteen days, instead they filed out of time without leave of the court 1 i
3. The plaintiff presented to the defendant is bad in law for lack of signatures of plaintiffs and endorsement on part of the drawer, thus contravenes section 44 of the Advocate's Act (Cap. 341 RE 2002) On hearing the defendant counsel, learned state attorney, Asenga opted to abandon point number one and only argued points 2 and 3. In submitting for point no 2, she submitted that the plaintiffs filed their plaintiff on 28/July/2015 against the order of the court delivered on 26/June/2015 which required it to be filed within fourteen days from the date of the order, without leave of the court to do so. She referred to the case Stephen Semba v Leonard Obeid Mlelwa and 2 others, Misc. Civil case No. 66/2005 where the court dismissed a plaintiff for failure to comply with orders of the court. She insisted that she believe the orders of the court are there to be observed and strictly followed and in case they are not followed there should be valid reasons for not doing so. In that regard she submitted that the plaintiff was time barred for failure to follow orders of the court. On point No.3. learned state

Attorney submitted that Order 6 rule 14 of the Civil Procedure Code, requires plaint to have signatures of plaintiffs. But the plaintiff's plaint lacks the signatures of the plaintiffs, thus contravenes mandatory provision of the Law. She continued to say that, the plaint also contravenes order VI rule 15 for lacking signatures of those verifying. She therefore prayed for the dismissal of the same with costs. For that she referred to the case of Thomas Deus Kapele v. Inspector General of Police and Attorney General, civil case No. 103/2004 where High 2 It Court held that a plaint was not proper for lack of authentication and the same was struck out. The counsel for the plaintiff, Jacob Malick, in reply conceded to the preliminary objection submitting that originally the plaintiffs were represented by Mr. Lundu and when he took over, it never came to his knowledge that there was order of this court granting 14 days for the plaint to be re-filed. Now that it has come to his knowledge he would not wish to waste precious time of the court, he theretore joined hands with the counsel for the defendant and prayed for the suit to be struck out without order as to costs. After considering the submission of both counsels, my view is that, since the counsel for the respondent conceded to the preliminary objection that their suit was filed beyond the 14 days prescribed by the order of this court for re-filing the same, it is actually time bared. The suit is therefore out rightly dismissed for being time barred. No order as to costs. (Sgd) DR. M.OPIYO, JUDGE 25/2/2016. I hereby certify this to be a true copy of the original. ' DEPUTY REGISTRAR ARUSHA 3

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