

TANZANIA / JUDGMENT

# tropical commodities vs cashwenut board of t another 2010 tzhccomd 16 4 october 2010

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TZHCCOMDDECIDED  
4 October 2010

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT DAR ES SALAAM  
COMMERCIAL CASE NO. 82 OF 2006 TROPICAL COMMODITIES LIMITED..... PLAINTIFF  
VERSUS CASHWENUT BOARD OF TANZANIA... 1ST DEFENDANT THE  
PSRC..... 2nd DEFENDANT

## RULING

MRUMA, J This is a ruling on an objection raised by Mr. Fungamtama, learned Counsel for the 2nd defendant that hearing of the plaintiff's case should not commence because the life span of the case has already expired. This objection was raised on 31/8/2010 when Mr. Lutema, Counsel for the Plaintiff informed the Court that he was ready to proceed and had one witness ready to testify. Mr. Fungamtama reminded the Court that the case was scheduled to proceed under Speed Track III on 22nd August 2008, therefore the life span i had expired long time ago. He referred this Court to its own decisions in Commercial Case No. 71 of 2004 between Tanzania fertilizers Limited vrs National Insurance Corporation and Parastatal Sector Reform Commission and Commercial Case No. 293 of 2002 between NBC vrs Milo Construction Limited and others. The learned Counsel also cited Land Case No. 150 of 2005 between Simon Engineering Works Limited vrs. Mang'ula Ma-Clinical & Machine Tools Limited and two others. Apparently Mr. Lutema was taken by surprise. He did not expect such objection, nevertheless he responded to Mr. Fungamtama's objection. Responding to Mr. Fungamtama's contention, Mr. Lutema submitted that although the court in Land Case No. 150 of 2005 went ahead and struck out the suit on the ground that its life span had lapsed, this Court in commercial Case No. 71 of 2004 did not strike out the suit but instead it advised the plaintiff to apply for extension of time within which it can apply for a departure from the scheduling order. Let me start by briefly revisiting the historical background of this suit. This suit was presented for filing on 9th November 2006 and it was called on before a judge for necessary orders on the same 2 day. The Defendants were duly served and filed their respective Written Statement of Defence. By 12th June 2008 pleadings were complete and a date for the first pre-trial conference was set. The first pre-trial conference was held on 22/8/2008 and both parties agreed to speed track 3. I beg to pose here and comment on the speed

track agreed by the parties on 22/8/2008. In terms of the provisions of Rule 3 (3) (c) of Order VIIIA of the Civil Procedure Code [Cap 33 R.E 2002], Speed Track 3 is reserved for cases considered by a judge or magistrate to be complex cases capable of being or are required in the interest of justice to be concluded within a period not exceeding fourteen months. Unlike the provisions of sub-rule (3) (a) and (b) of Rule 3, which provide clearly that the life span (Le speed track) is counted from the date of commencement of the case, the provisions of sub-rule 3 (c) and (d) are silent as regards to when a life span of a case placed under speed tracks 3 and 4 should start to count. If we assume that like in speed tracks 1 and 2, the life span should start running from commencement of the case, it goes without saying that on 22/8/2008, when speed track 3 was agreed, it had already expired! 3 The second assumption is that the life span for speed tracks 3 and 4 commences from the date it is set, that is to say on the 1st pre-trial conference date which in our case is 22/8/2008. But even this one cannot save the plaintiff because counting from 22nd August 2008, the 14 months period lapsed on 22nd October 2009. Thus, in any event the life span of Commercial Case No. 82 of 2006 expired long time ago and there was no application for amending or departing from the scheduling order when Mr. Fungamtama raised his objection. Rule 4 of Order VIII A of the Civil Procedure Code which deals with prohibition of further amendment to order provides:- "Where a scheduling order is made, no departure from or amendment of such order shall be allowed unless the Court is satisfied that such departure of/or amendment is necessary in the interest of justice and the party in favour of whom such departure or amendment is made shall bear the costs of such departure or amendment, unless the Court directs otherwise. " The case at hand was set to be concluded within 14 months period which falls under speed track 3. Any attempt to have it concluded after the prescribed 14 months period amounts to a 4 departure which is prohibited under Rule 4 of Order VIII A of the Civil Procedure Code. In the case of Tanzania Fertilizers Company Limited vrs. National Insurance Corporation of Tanzania Limited and PSRC, Commercial Case No. 71 of 2004, this Court (Massati, J. as he then was) held that; "... If a party finds that the deadline for the finalization of his case is about to expire, he is, legally bound to seek extension or amendment of the scheduling order well before the expiry. And if it expires, his duty is in apply for extension of time for filing an application for departure. " In the present case the life span expired long time ago. In view of the decision of this Court in Tanzania Fertilizers Company Limited Case (supra), which I am in all fours with, the Plaintiff ought to have applied for departure before dead line, and if (as the fact of this case would depict) he was already out of, time by the time the 1st pre-trial conference was held he was ought to have had applied for extension of time at the time the 1st Pre- Trial Conference was held. Mr. Lutema asked the Court to allow the Plaintiff to make his application for departure. For sure that would have been in the 5 interest of justice, but unfortunately the application cannot be entertained in view of the objection raised by Mr. Fungamtama. As correctly submitted by Mr. Fungamtama, to entertain the application at this late hours will amount to pre-empting or arresting the objection. In fine therefore, I find that the life span of the suit has expired, and I have no option but to strike it out with costs. Order accordingly. A.R.- Mruma JUDGE 4/10/2010. 4/10/2010. Coram Hon. A.R. Mruma, J. For the Plaintiff: Mr. Mkanda, Advocate For the 1st Defendant: Mr. Fungamtama for Mr. Kilindu for the For the 2nd Defendant. J 1st Defendant. Mr. Fungamtama for the 2nd Defendant CC: J. Grison. COURT:- Ruling delivered.

A.R.-Mruma JUDGE 4/10/2010. Words count: 1,109 6 1 Certify that this i copy of ■'s is a true and correct g'nal Certificate/Document Sign: J

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