

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 182 OF 2005

REV. PETER PETER JUNIOR PLAINTIFF

VERSUS

**THE ATTORNEY GENERAL 1ST DEFENDANT
THE DISTRICT COMMISSIONER
OF BAGAMOYO 2ND DEFENDANT**

Date of last order - 9/4/2010
Date of Ruling - 12/5/2010

R U L I N G

JUMA, J.:

It has taken four years and six months since commencement of this suit to complete the cross examination of the first witness of the plaintiff (Rev. Peter Peter Junior) on 9th April 2010. By any stretch of imagination this case has so far taken up an inordinately long time to reach its current stage. Plaintiff's fourth paragraph summarizes the substance of his claim against the Attorney General (1st Defendant) and the District Commissioner of Bagamoyo (2 Defendant).

The Plaintiff claims against the Defendants jointly and severally for compensation of Tshs.680,000,000/= as special and general damages. The Plaintiff allege that he was defamed, harassed,

remanded by police and faced difficulties all occasioned by a Removal Order that was issued on him on 30th November 2004.

Upon completion of his cross examination by Mr. Mweyunge the learned State Attorney On 9th April 2010, the plaintiff prayed to be allowed to bring three witnesses – Freedom Isaac Nyerere, Dr. Papani of Bagamoyo District Hospital and a Medical Officer of Kigongoni Prison in Bagamoyo. Mr. Mweyunge the learned State Attorney strenuously opposed the prayer. According to the learned State Attorney, the plaintiff should not be granted his request because earlier during the scheduling conferences the plaintiff had stated that he alone would testify on his own behalf. In addition, Mr. Mweyunge contended that after the setting of the speed track to guide future conduct of this case, no further request to add witnesses can be entertained without the leave of the Court to depart from scheduling orders under the speed track concerned. According to the State Attorney, leave to add witnesses can only be entertained when a new scheduling order is made by this Court. Therefore, the learned State Attorney invited this Court to direct itself to Rule 4 of Order VIIIA of the **Civil Procedure Code** which does not entertain addition of witnesses outside the speed track earlier assigned to this matter.

It is useful to pause here and look back at the background to this delayed case before addressing myself to the prayer by the

plaintiff to bring more witnesses and Defendant's opposition to that request.

Records show that the Plaintiff filed his plaint on 27th October 2005 whereas the defendants filed their joint written defence on 16th February 2006. After the completion of pleadings, on 27th March 2006 this Court (Kalegeya, J. as he then was) fixed the matter on speed track 2 and he also scheduled mediation on 8th May 2006. That mediation failed and the final pre-trial conference under Order VIII B was set for 19th June 2006. The matter was re-assigned to Mihayo, J. who set the hearing date on 23rd February 2007. Records show that on the first day of hearing, apart from testifying in-chief, the Plaintiff informed the Court that he would lead his own case because he could not afford the services of a Counsel. Neither the Plaintiff nor the Defendants notified the Court the number of witnesses the two sides would call to support their respective cases.

During the course of his testifying in chief the plaintiff sought an adjournment to enable him to hire services of a Counsel to conduct his case. Hearing was as a result adjourned to 25th April 2007 when an attempt by the plaintiff to serve the defendant with an amended version of his plaint was rebuffed when this Court ordered its deletion from the trial records. There followed another bout of adjournments and mentions which included even an attempt to reach an out of court settlement.

The plaintiff finally resumed and completed his evidence in chief on 24th September 2008, which was more than one year since he first led his own evidence in chief. Cross examination of the plaintiff which had begun on 24th September 2008 was postponed to 25 November 2008.

Apart from adjournments and mentions which have become integral part of this case, nothing significant on the case happened after the 25th November 2008 postponement till almost a year later when on 28th September 2009 the matter was re-assigned to me. Mr. Mweyunge the learned State Attorney resumed the cross examination of the plaintiff on 9th April 2010.

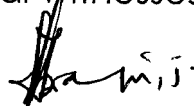
As I stated earlier, my perusal of the records show that neither the Plaintiff nor the Defendants notified the Court the number of witnesses the two sides would call to support their respective cases. The main issue for my determination is whether in light of speed track two under which this case is governed, the request for addition of witnesses is sustainable.

According to ORDER VIII A R 3 of the **Civil Procedure Code, Cap. 33** cases that are scheduled on speed track two are destined to be concluded within a period not exceeding twelve months from commencement of the case. HC Civil Case Number 182 of 2005

was commenced on 27th October 2005 and by any standard the life span of this case expired on 26th October 2006.

ORDER VIII A r 4 prohibits departure from or amendment of scheduling conference order unless the court is satisfied that such departure or amendment is necessary in the interests 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. With respect, I will agree with the learned State Attorney that before praying for additional witnesses to testify on his behalf, the plaintiff should first seek an extension of the Speed Track Two-life of HC Civil Case Number 182 of 2005 which expired by 26th October 2006. The Plaintiff in the foregoing circumstances cannot in law request for witnesses to testify on a case that has since expired.

The request by the Plaintiff to bring additional witnesses under an expired Speed Track Two is rejected. In the interests of justice the Plaintiff is given twenty-one days (21) from the date of this ruling within which to first seek an extension of the expired Speed Track before requesting for additional witnesses.



I.H. Juma

JUDGE

12/05/2010

12/05/2010

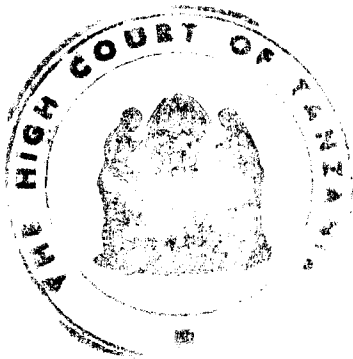
Coram: I.H. Juma, J.

For Plaintiff: Present in person

For Defendant: Absent

C.C.: Janeth

Order: Ruling is read in presence of the plaintiff.



A handwritten signature in black ink, appearing to read "I.H. Juma".

I.H. Juma

JUDGE

12/05/2010