

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
CIVIL CASE NO. 124 OF 1997
ABDUL HILAL ALI - PLAINTIFF
VERSUS
H.R.N. ENTERPRISES LTD BRANCH - DEFENDANT

R U L I N G

KALEGEYA, J.

The suit leading to the present ruling was filed under OXXXV CPC. Under that order the defendant is required to apply for leave to defend within 21 days. It was (suit) filed on 29\4\97.

Mr. Thadeyi for the Plaintiff prays for judgement arguing that the Defendant has not filed an application^{for leave} to defend within the prescribed time. Mr. Charles for the Defendant counters this prayer by imploring the court to give him more time to prepare and file an application for leave to defend. As a basis for his application Mr. Charles says that he has just been instructed (just yesterday) and on telephone; and that he was given just a copy of the Summons which contains a signature of one of the Plaintiff's staff and an initial form.

I have carefully considered the arguments of both sides and I have reached a conclusion that Mr. Thadeyi's application should be granted for the following reasons:

(i) An application^{for leave} to defend a suit filed under O.XXXV CPC is mandatory (O.XXXV, Rule 2 CPC). The suit was filed on 29\4\97. A copy of a document which purports to be an application for leave to defend, now in custody of Plaintiff is dated 16\5\97. As we can't imagine a situation where plaintiff drew up an application for leave to defend on behalf of the Defendant it naturally goes without reservations that Defendant was aware of the suit and thats why he prepared that document. But legally a document is not filed with the Court unless it is so filed and fees paid. Drawing up a document and remaining with it in a file

or serving it on the other party is not filing within the meaning of the law. So far, over 6 months after the Defendant was served no application ^{for leave} to defend has been filed. Apart from failure to file the application the time within which to act has deplorably run out.

(ii) While appreciating Mr. Charles's efforts to defend and salvage the defendants' case (and which I must commend him for that) I must confess and pity him that he is dealing with undeserving client. A person who is aware of an existence of a case against him and what is required of him for a period of 6 months and who decides to instruct an advocate the way he has - affording him (Charles) no information at all except two documents, a copy of Summons and initial notice, can't be taken to be serious at all. At the least he should be taken to be praying with Court processes.

For the reasons advanced this court finds no justifiable cause for not conceding to Mr. Thadeyi's prayer. The same is hereby granted.

(L. B. Kalegeya)

JUDGE

4\12\97

Order: (i) Judgement is hereby entered in favour of the Plaintiff under O.XXXV, Rule 2(a) as prayed with a qualification that the principal sum is reduced to 25,000,000/= as the Plaintiff's Counsel has informed the Court that after the filing of the suit the Defendant has paid shs. Tshs. 5 million.

(L. B. Kalegeya)

JUDGE

4\12\97

Delivered to Mr. Thadeyi for the Plaintiff and Mr. Charles for the Defendant.

AT DAR ES SALAAM
4TH DECEMBER, 1997

(L. B. Kalegeya)
JUDGE