**Attorney-General v Shavu**

[2000] 1 EA 1 (CAT)

**Division:** Court of Appeal of Tanzania at Dar-Es-Salaam

**Date of judgment:** 26 November 1999

**Case Number:** 1/98

**Before:** Kisanga, Mfalila and Lugakingira JJA

**Sourced by:** L J S Mwandambo

**Summarised by:** H K Mutai

*[1] Practice – Procedure – Parties – Attorney-General among the Defendants – Hearing of suit* ex parte

*– Whether* ex parte *hearing could proceed – Order IX, Rule 6 – Civil Procedure Code 1966.*

*[2] Public office – Abuse of – Misfeasance of government officer – Arrest and detention of Respondent –*

*Trespass to property – Application for damages – Whether government liable for damages.*

**Editor’s Summary**

Sometime during the course of 1978 the Respondent became involved in negotiations with Kigoma

Regional Trading Company Limited (“KRTC”) whereby the Respondent was to hand over the premises situated on plot number 5/A where he operated a bar, a lodging, a shop and a restaurant to Kigoma

Regional Trading Company Limited in exchange for the latter’s premises situated on plot number 7/D. In the wake of the breakdown of negotiations between the parties, on 27 November 1978 the Kibondo

District Area Commissioner ordered the Respondent’s arrest and subsequent overnight detention. That same night, agents of the Commissioner and Kigoma Regional Trading Company Limited broke into the

Respondent’s premises and took away goods worth TShs 357 253, TShs 90 000 in cash and cheques worth TShs 4 800. Kigoma Regional Trading Company Limited then moved into the premises but the

Respondent was unable to move onto Kigoma Regional Trading Company’s premises due to their dilapidated state. Following his release up until November 1992, the Respondent sought compensation from the government or, alternately, consent to sue. The government admitted liability but offered compensation that the Respondent considered inadequate. Consent to sue was flatly refused. Following a change in the law, in August 1993 the Respondent was finally able to bring suit against the

Commissioner, Kigoma Regional Trading Company Limited and the Attorney-General seeking damages from them for trespass to property and the person. A joint written statement of defence on behalf of the

Attorney-General and the Commissioner was filed on 16 January 1994 and the suit was set down for hearing on 10 June 1994. On that day, the hearing was adjourned to 9 August due to the Defendants’ failure to appear. When the suit came up for hearing on 9 August neither the Respondent nor his counsel appeared and the suit was dismissed for want of prosecution. However, on the Respondent’s application, the suit was subsequently restored on 22 September and the hearing was set for 2 March 1995. As KRTC had all along failed to either enter appearance or file a defence, judgment against it was entered that day.

Following a failed attempt at mediation, the suit was next set for hearing on 28 April 1995. On that date, counsel for the Defendants failed to appear and the Respondent was permitted to proceed *ex parte*. The trial court granted the claims sought and awarded the Respondent compensation in the amount of TShs 878 383 107. The Attorney-General appealed against the decision primarily on the grounds that the trial Judge erred in permitting the Respondent to prove his case *ex parte* contrary to the provisions of Order IX, Rule 6 of the Civil Procedure Code and that he erred in his calculation of the compensation due to the Respondent.

**Held** – The words “when the suit is called for hearing” in Order IX, Rule 6(1) of the Civil Procedure

Code referred to the first day fixed for hearing following the closing of the pleadings. The provisions of

Order IX, Rule 6, directing that where a plaintiff applied for and obtained leave to proceed *ex parte* the

Attorney-General was to be served with the application and the new hearing date, were also applicable to adjourned hearings when that provision was combined with Order XVII Rule 2. In this instance, the first hearing date was 10 June 1994 and 28 April 1995 was an adjourned date. However the provisions of

Order IX, Rule 6 extended a privilege to the Attorney-General not enjoyed by other litigants and applied only where the Attorney-General was a sole Defendant. Where, as here, he was one of several Defendants the Rule did not apply. The trial Judge had therefore not erred in permitting the Respondent to proceed *ex parte*. A plaintiff was only expected to take reasonable steps to mitigate his losses and this was a question of fact to be determined on the peculiar facts of each case. In this instance, there were no alternative premises for the Respondent to turn to and, in any case, the goods and money that he could have used to restart the business had been seized. The trial Judge was therefore not to be faulted for granting all the items of lost earnings.

In awarding compensation, a court was entitled to take account of devaluation; *NBC v Perma Shoe Co*

[1988] TLR 224 applied, and in awarding such compensation, the courts would apply a principle of reasonableness depending on the circumstances of each case. In this instance, the Respondent was entitled to compensation for devaluation. However, the trial Judge erred in using a multiplier derived from the exchange rates between the Tanzania shilling and the dollar over the period 1979 to May 1995.

No evidence had been adduced at trial to show what the exchange rates were between those dates.

The award of interest on the decretal amount was a normal practice and did not amount to double compensation.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means explained; “**F**” means followed; “**O**” means overruled)

*Augustino v Mugabe* [1992] TLR 137

*NBC v Perma Shoe Co* [1988] TLR 224 – **AP**