**Tohme v Shoumar and another**

**Division:** High Court of Tanzania at Dar-es-Salaam

**Date of ruling:** 23 March 2004

**Case Number:** 296/02

**Before:** Kimaro J

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Civil procedure – Judgment – Setting aside* ex parte *judgment – Time within which application to be*

*filed – Whether application filed after 21 days incompetent and time barred – Section 95 Civil Procedure*

*Code – Order IX, rule 13(1) and (2) Civil Procedure Rules (Tanzania).*

**Editor’s Summary**

The applicant filed an application for setting aside an *ex parte* judgment entered on 29 October 2003. The application was filed on 21 November 2003. The main reason given to support the application was that the applicants were not duly served as they resided outside Tanzania. The respondents advocate filed a counter affidavit contending that the applicants were served by publication in a local newspaper. An issue of competency of the application arose.

**Held** – The limitation period for filing an application to set aside an *ex parte* judgment was 21 days under Order IX, rule 13(2). In this case judgment was entered on 29 October 2003 and the 21 days lapsed on 18 November 2003 yet the application was filed on 21 November 2003. There was no evidence to show that the application was filed within time. Application dismissed for being time barred. **No cases referred to in ruling**