**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).*

**RULING**

**KIMARO J:** The application before me is for setting aside an *ex parte* judgment entered on 29 October 2003. The application was filed on 21 November 2003 and it is supported by an affidavit of Mr Richard Amerius *Rwabutaza*, the advocate appearing for the applicants in this application. The main reason given to support the application is that the applicants were not duly served as they are residents outside Tanzania. They were not aware of the case. In a counter affidavit deponed by Mr *El-Maamry*, it is contended that the applicants were served by publication in our local papers (*Daily News* 5 April 2003). In a reply, Mr *Rwabutaza* has raised several matters, some being legal. Among them is the legality of Mr *El-Maamry*’s representation of the respondent while previously he acted for both parties. The other matters raised are concerned with the effectiveness of the method of service used and the legality of powers of attorney held by the attorneys of the applicant. The application was argued by written submissions. Before going to the merit of the application it is important to ascertain the competency of the application. The application is filed under Order IX, rule 13(1) and section 95 of the Civil Procedure Code of 1996. The limitation period for filing an application to set aside an *ex parte* judgment is 21 days. This is in terms of Order IX, rule 13(2). In this case judgment was entered on 29 October 2003. The 21 days lapsed on 18 November 2003. The application was filed on 21 November 2004. There is no evidence to show that this application is filed within time. It was filed after 21 days. This aspect alone is sufficient to dispose of the application. It is dismissed with costs for being time barred. For the applicant: *Mr El-Maamry* For the respondents: *Mr Rwabutaza*