IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
CIVIL CASE NO 87 OF 1992

MUSSA SAGAMIKO.....APPLICANT

VERSUS

SETHLYMO.....RESPONDENT

RULING

THEMA, J

On 22nd February 2001 this Court dismissed the applicant's application for extension of time to appeal to the Court of Appeal against the decision of this Court dated 29/10/1998, declining an application for review. The Court dismissed the aforesaid application when the applicant though duly served defaulted appearance on the day of hearing. Mr Kashumbugu for the respondent was present on the day of hearing, although he was not present on 1/11/2000 when the application was set for hearing on 22/02/2001. Ironically Mr. Jundu learned advocate for the applicant was present on 1/11/2000 and undoubtedly, communicated the date of hearing to Mr. Kashumbugu.

Following the dismissal of the application for lack of prosecution, the applicant is seeking restoration of the application and has advanced the reason that he had notice that the date of hearing was fixed for 23rd February 2001 and not 22nd February 2001. Both applicant and his advocate Mr Jundu in their sworn evidence have averred that they dutifully appeared on 23/2/2002 just to be told that hearing was on the previous day. They have not supported their assertion by any evidence of the undisclosed court clerk whom they met on 23/2/2002.

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Be as it may the court record is quite clear that hearing in the presence of Mr. Jundu learned Advocate and in the absence of Mr. Kashumbugu was fixed for 22nd February 2001. Mr Jundu is not telling the truth in saying that hearing was fixed for 23rd February 2001. Equally the summons to the respondent issued on 3rd November 2000 and received by Mr. Kashumbugu on 23/11/2000 gives 22nd February 2001 as the date of hearing.

In the circumstances I refuse to accept the reasons advinced by both Mr Jundu and his client in support of the application for restoration. Given the background to this matter I have every reason to believe that the applicant and his advocate are playing a game of delaying tactics to frustrate and delay the ends of justice. Such conduct is to be detested and condemned by this court and the parties are warned accordingly.

In the premise the application for restoration is dismissed with costs.

It is so ordered.

S. Ihema

JUDGE

22/7/2002.

18/2/2003

Coram:- F.S.K. Mutungi DR
For Applicant - Absent
For Respondent - Absent

Court:- The Ruling is marked read of the absence of the parties though dully served.

F.S.K. Mutungi
DISTRICT REGISTRAR

18/2/2003