

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC.CIVIL APPLICATION NO. 206 OF 2002

DAR ES SALAAM CITY COUNCIL APPLICANT

VERSUS

MEHBOOB BHARWANI t/a BAHASHA LTDRESPONDENT

R U L I N G

SHANGWA, J.

In this case , the applicant Dar es salam city council is hereby requesting this court to set aside its order made by E.M. Mushi, J. on 9.9.2003 dismissing its Misc.Civil Application No. 206 of 2002 for want of prosecution and to restore that application.

The application which Dar es salaam city council needs to be restored is for leave to file an appeal out of time against the refusal by the court of the Resident Magistrate at

Kisumu to set aside the ex parte judgment made on 14.1.1999 by Mtotela, PRM (Rtd) in favour of the respondent in RM Civil Case No. 138 of 1995.

I regret to say that the said application cannot be restored due to the fact that a similar application was made by the applicant and disposed of by Ihema, J. (Rtd) in Misc. Civil Application No. 224 of 1999. Ihema, J. declined to grant that application on 30.1.2001

The record shows that after Ihema, J's refusal to grant that application, the Dar es salaam City Council (Applicant) filed an application for leave to appeal to the Court of Appeal. However, its application to do so was dismissed by Madame N.P Kimaro, J. on 26.10.2001. No appeal to the Court of Appeal was preferred against Madame N.P. Kimaro J's decision which is appealable.

I think the proper procedure which ought to have been followed by the Dar es salaam City Council is to appeal against this court's refusal to grant it leave to appeal to the court of Appeal against the ruling of Ihema, J. As that was not done, I also regret to say that I cannot set aside this court's order in which E.M.E Mushi, J. dismissed Misc. Civil Application No. 206 of 2002. After all, setting it aside will not serve any useful purpose.

If the applicant's lawyers want to serve the interest of justice, they can still do so by applying for extension of time to appeal against this court's decision by Madame N.P. Kimaro, J. who dismissed the applicant's application for leave to appeal to the court of Appeal against Ihema, J's ruling in Misc. Civil Application No. 224 of 1999.

For the reasons, I have given above, I hereby dismiss the applicant's application. However, I order that each party should bear its own costs.



A. Shangwa,

JUDGE

15.7.2005

Delivered in court this 15th day of July, 2005.



A. Shangwa,

JUDGE

15.7.2005