

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

PC. CIVIL APPEAL NO. 1 OF 2002

CHARLES MOSES APPELLANT/APPLICANT

VERSUS

SHAMTE KHATIBU RESPONDENT

Date of last order – 21/12/2007

Date of Ruling – 20/2/2008

R U L I N G

Shangwa, J.

This is an application for extension of time within which to apply for setting aside the dismissal order of the Applicant's appeal which was passed by Ihema, J. (rtd) on 21/3/2003. It is supported by affidavit of the Applicant Charles Moses. Counsel for the parties argued this application by way of written submissions as per this court's order dated 30/10/2007.

In his written submissions, counsel for the Applicant, Mr. Masaka submitted that the Applicant was not aware of the date of hearing of the dismissed appeal as he was not duly notified of the date of hearing it. He contended that absence of notice of the date of hearing the appeal constitutes sufficient cause to grant this application.

In reply, counsel for the Respondent Mr. C.K. Semgalawe submitted that there are no reasonable grounds adduced as to why after being aware of the dismissal order, the Applicant was late in filing this application in which he prays for extension of time to file an application to set aside the dismissal order of his appeal.

In his rejoinder, Mr. Masaka posed a question on behalf of the Applicant in the following terms and I quote ". . . *Whether lack of a notice of hearing of the dismissed appeal does not constitute sufficient reason for the application for extension*"?

In my opinion, lack of a notice of hearing of the dismissed appeal is not a ground for the application for extension of time within which to apply for setting aside the dismissal order of the appeal. However, lack of awareness of the dismissal order is a ground for an application such as this one. In this case, the dismissal order of PC. Civil Appeal No. 1 of 2002 between the parties was made on 21/3/2003. It was made in the absence of the Applicant. After making that order, the Applicant was not notified about it by the District Registrar Dar es Salaam High Court District Registry. He simply become aware of it through a letter addressed to him by the Resident Magistrate – in – charge of Ilala District Court.

That letter was with Ref. No. SDM/K/CIV/9/2/VOL.III/1 dated 27/1/2005 i.e. annexure 'A' to the Applicant's affidavit in support of this application. When the Applicant received that letter, the time within which to apply for setting aside

the dismissal order of his appeal had expired a long time ago.

Under such circumstances, I hold that the Applicant's application for extension of time within which to apply for setting aside the dismissal order of his appeal made on 21/3/2003 by Ihema, J. (Rtd) in PC. Civil Appeal No. 1 of 2002 has merit. I hereby grant it and order that the Applicant should file his application for restoration of his appeal within two weeks from today.

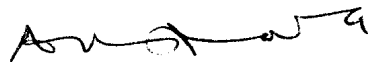


A. Shangwa

JUDGE

20/2/2008

Delivered in court this 20th day of February, 2008 in the presence of Mr. Masaka for the Applicant and Mr. Semgalawe for the Respondent.



A. Shangwa

JUDGE

20/2/2008

