

**IN THE HIGH COURT OF TANZANIA  
AT DAR ES SALAAM**

**PC.CIVIL APPEAL NO. 29 OF 2002**

**RAMADHANI MOHAMED.....APPLICANT**

**VERSUS**

**FATUMA SAID.....RESPONDENT**

**RULING**

**MLAY, J**

According to the Chamber Summons filed on 31/8/2004 by Kifunda and Co. Advocate, this is an application for the "grant [of] an order for re admission of the appeal". The application has been brought under order XXXIX Rule 19 of the Civil Procedure Code and it is supported by the affidavit of the applicant, and RAMADHANI MOHAMED. The application results from the dismissal of the applicant's appeal by Mushi J, for was of prosecution. In the judgment of his lordship E.M.E. MUSHI he stated at page 5 of the typed judgment

***"Upon the non appearance of the  
appellant on the day fixed for hearing  
and upon proof of service, therefore the  
Respondent, through his agent, prayed***

***the court that the appeal he dismissed for want of prosecution.***

***I have gone through the contents of the appeal. I have perused at length the records of the lower court. This matter relates as far back as 1991. It is imperative that parties who file civil matters in court of law should also be prepared to appear and prosecute them, when they are called upon for hearing. They just can't ignore the service of summons. Its upon this consideration, therefore that I am inclined to grant the respondent's prayer. The appeal is accordingly dismissed for want of prosecution".***

In his affidavit and at the hearing of this application, the applicant has insisted that they were not served for appearance before Mushi J on 25/6/03. The respondent has submitted that the applicant was telling lies and that he was served but refused to accept service. According to the record of the proceedings on 25/6/2003, the respondent as represented by one Mr. MOHAMED NDOSI told the as follows:-

***"My lord the appellant is not present. But he had notice of today's hearing date. He signed summons to that effect a copy of the same is filed. However the appellant refused to accept the summons on the ground that he does not recognize it. The summons is endorsed to that effect. In that view my lord, I pray that the appeal be dismissed for want of prosecution".***

It was on this oral application that the ruling of Mushi J. which quoted above, was made. The applicant did admit during the hearing of this application, that he was served but alleged that he was served to appear before Kimaro J. The notice of hearing supports the applicant's assertion that he was served to appear before Kimaro J on 28/8/2003. It is this notice which was served on the applicant which was enclosed upon that the applicant had refused service. On the date of hearing for which the applicant had refused service of notice of hearing, the appeal came up before Mushi J for hearing.

The applicant having refused service and as a consequence, having failed to appear at the hearing of the appeal before Mushi J,

cannot rely on his refusal to accept service, as a ground for the re-admission of the appeal, just because the appeal came up before Mushi J and not before Kimaro J. Had this applicant accepted service and appeared in court, he would have been informed that the appeal was before Mushi J on that day, and not Kimaro J as stated in the notice. At any rate, the applicant did not fail to appear before Mushi J for the hearing on 25/06/2003, because he was misled by the notice of hearing which stated the hearing was before Kimaro J. The applicant did not appear at the hearing because he refused service of the notice of hearing. Rule 19 of order XXXIX of the Civil Procedure Code 1966 under which the application has been made provides as follows:-

***"19 where an appeal is dismissed under rule 11 sub rule (2) or rule 17 or rule 18, the appellant may apply to the court for the re-admission of the appeal, and where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called for hearing, ..... the court shall re-admit the appeal on such terms as to costs in otherwise as it thinks fit. (emphasis mine)".***

The applicant has not satisfied this court that he was prevented by sufficient cause from appearing at the hearing of the appeal when it was called for hearing before Mushi J. On the contrary, it has been shown that the applicant failed to appear at the hearing because he refused to accept service of the notice of hearing. This can not be sufficient cause which prevented the appellant from appearing at the hearing of the appeal.

This application is therefore without merit and it is dismissed with costs.

  
**J.I. MLAY**  
**JUDGE**

Delivered in the presence of applicant and the respondent this 14<sup>th</sup> day of June, 2006.

The rights of appeal is explained.

  
**J.I. MLAY**  
**JUDGE**  
**14/06/2006**