

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

MISC.CAUSE NO. 65 OF 2003

PAVISA ENTERPRISES.....APPLICANT

VERSUS

**THE MINISTER FOR LABOUR YOUTHS DEV. &
SPORTS
ATTORNEY GENERAL.....RESPONDENT**

RULING

MLAY, J.

This is an application for setting aside the dismissal of an application for leave to apply for prerogative orders and for the extension of time in which to file written submissions on a preliminary objection to the said application for leave to apply for prerogative orders. The application has been brought under Order IX Rule 9 (1) of the Court Procedure 1966 and Section 14 of the Law of Limitation Act, 1971, and it is supported by the affidavit of JOSEPH MUTABINGWA, advocate for the applicant.

The application for prerogative orders was dismissed for want of prosecution and the applicant's advocate has in his affidavit stated that, the failure to appear and to file written

submissions with in the period scheduled by this court, was lack of notice on the part of the applicant and his advocate, as the record the court shows that the dates which were fixed for the application to come up in chamber and also taken the playing written submission was scheduled, were not notified to the applicant or this applicants advocate.

When the application case up before me on 13/9/2005, the parties was ordered to file written submissions on the application in accordance with the following schedule:-

1. Applicant by 27/9/2005
 2. Respondent by 11/10/2005
- Rejoinder by 19/10/2005

Ruling on 10/2/2006.

Only in applicant's advocate Mr Rutabingwa had filed written submissions at the time of writing this ruling, which is well beyond the last date on which written submissions should have been filed by all parties.

Having considered the contents of the affidavit in support of the application and the written submissions by Mr Rutabingwa, I am satisfied that the applicant's failure to appear and to file the written submissions on the preliminary objection to the application for leave to apply for prerogative orders, was due to lack of notification. As it was stated in the case of RAMADHANI AMIRI Vs YUSUFU RAJABU (1995)TLR 26, lack of evidence of service is sufficient cause for non appearance.

As the applicant was not aware of the coming up of the application and also of the schedule to file the written submissions, the application is allowed. The order of dismissal is accordingly set aside and the applicant is granted extension of time in which to file written submissions on the preliminary objection within 14 days of this order.

J.I. Mlay

JUDGE
10/2/2006