

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

MISCL . CIVIL APPLICATION No. 445 OF 2018

ZAMDA RASHIDI MLANZI.....APPLICANT

Versus

KAHEMA ILEMA.....RESPONDENT

RULING

4th -24th December, 2019

J. A. DE-MELLO

The Applicant's suit in **Misc. Application No. 598 of 2019** delivered on **30th July, 2019**, was dismissed for **Want of Prosecution** notwithstanding an **Ex Parte** hearing that was granted. It was an application to set aside the dismissal Order of this court in the for **Extension of Time to lodge an Appeal Out of Time**. The Application by way of Chamber Summons accompanied by the Applicants own affirmed Affidavit is similarly in support deponing reasons for failing to heed to the order owing to confusion shared by the **Court Clerk one Placidia**, essentially unclear directives from the Court. She even expressed her lay background and, in care of legal aid from **Tanzania Women Lawyers Association**.

It is trite law that in such cases the Court is interested with ascertaining whether or not the reasons advanced for **non compliance** are good and sufficient enough as stipulated under **Order IX Rule 4** of the **CPC Cap. 33**. Reference to the attached hand written rather scribbled document to the Affidavit marked as A-1 is clear fact evidencing schedule for filing the **Written Statement of Defense**, as opposed to **Written submission**. The misdirection of the Court Clerk constitute sufficient cause good enough for consideration by this Court to grant setting aside of its own order. It is unfair and inhuman to punish a litigant worse even a lay and un represented one for faults occasioned by the Court.

In fine, hereby the **Dismissal Order** of **30th July, 2019**, is **set aside** as forthwith as **Misc. Application No. 589 of 2018** is heard and by way of written submissions on or before ... 2020. No orders as to cost, this being an **Ex Parte** hearing with the Applicant a lay and un represented litigant.

It is so ordered.



J. A. DE MELLO

JUDGE

24/12/2019