

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MTWARA**

**CRIMINAL APPLICATION NO. 9 OF 2015**

**FARAJI LIKENGE ..... APPLICANT**

**VERSUS**

**THE REPUBLIC. .... RESPONDENT**

**(Revision from the decision of the High Court of Tanzania  
at Mtwara)**

**(Mipawa, J.)**

**dated the 7<sup>th</sup> day of October, 2010**

**in**

**Misc. Criminal Application No. 2 of 2010**

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**RULING**

27<sup>th</sup> & 29 July, 2016

**LILA, J.A.:**

The present application has a chequered history. Faraji Likenge, the applicant, stood charged before the District court of Liwale with the offence of armed robbery contrary to section 28 and 286 of the Penal Code. He was convicted as charged and handed down a statutory minimum sentence of thirty years imprisonment. Undaunted, he appealed to the High Court at Mtwara. His appeal was dismissed. Still aggrieved, his attempt to have his

appeal heard and determined by this Court has met a number of unexpected huddles as will be revealed soon.

After his appeal was dismissed by the High Court (Hon. Lukelelwa, J. as he then was), he was late in lodging his appeal to this Court within the prescribed time. He, accordingly, had to lodge an application for extension of time within which to lodge his appeal to this Court. May be because of a rush, instead of lodging that application in this Court he lodged the same in the High Court. Unaware of the anomaly the High Court granted the application. He could not, thus, access this Court but wait for the high Court proceedings be revised. The Court, fortunately, exercised its powers of revision, revised the proceedings and orders given by the High Court. But this was after a good number of years had passed. This, in brief, is the hard way the applicant has passed through to access the Court.

At last, the appellant has now appeared before this Court. He has approached this Court with an application for extension of time, by way of notice of motion made under Rule 10 and 48(1) and (2) of the Court of Appeal Rules, 2009. It is supported by an affidavit affirmed by himself. He is

seeking this court's indulgence to grant him an order for extension of time to file the notice of appeal.

The applicant has advanced one main reason for the delay in instituting the notice of appeal within the prescribed time that after his first appeal was dismissed by the High Court and knowing that he was late in lodging the notice of appeal within time, he applied for extension of time to file it but instead of filing the same in this Court it was wrongly addressed to the High Court whereat it was received and wrongly, though granted, determined by it. He attributes that glaring mistake to the prison authority which prepares and process the prisoners' appeals. He stated that prisoners are just asked to sign only.

When the application was called on for hearing the appellant appeared in person, unrepresented, while the Respondent Republic had the service of Ms. Nunu Mangu, learned State Attorney, who did not, however, resist the application.

Before me, during the hearing, the appellant opted his reasons for delay in filing his notice of appeal as contained in the notice of motion and

the affidavit in support of the application be adopted in their totality and that he had nothing to add.

Supporting the application, Ms. Nunu Mangu, learned State Attorney, argued that the applicant had showed intention to appeal against the High Court decision since long but for the oversights and huddles indicated in paragraphs 4 and 5 of the affidavit. She accordingly urged this Court to grant the applicant's application so that justice can be done to him.

I have carefully considered the applicant's reasons, which prevented him from lodging the notice of appeal within the prescribed time after his appeal was dismissed by the High Court. By and large, it is apparent that the applicant consistently and tirelessly, as indicated above, fought to access this Court so that the proprieties of the conviction and sentence by the lower courts could be scanned by this Court. The reasons for delay as deponed by the applicant in paragraphs 4 and 5 of the affidavit in support of the application and appreciated by this Court in Criminal Revision No. 2 of 2014 when revising the decision of the High Court in Misc. Criminal Application No. 2 of 2010 in which his application for extension of time within which to file notice of appeal was erroneously granted, apparently show the appellant

bears no blame. His application was wrongly directed to the High Court instead of this Court.

The circumstance and difficulties experienced by prisoners seeking to exercise their rights of appeal, revision and various applications particularly in the preparation and dispatch of relevant documentations have attracted sympathy of this Court and in certain circumstances and cases taken issue to the respondent Republic to disprove the averments of the prisoners or remandees. To mention just two of such cases to substantiate the above exposition are, **one;** in **Sospeter Lulenga V. R;** Criminal Appeal No. 108 of 2006 (unreported), the appellant who was a prisoner then, was late in lodging the notice of intention to appeal and the petition of appeal within the time prescribed by section 361(1)(b) of the Criminal Procedure Act (Cap 20 R.E. 2002). He applied for extension of time to the High Court but was turned down. In his affidavit in support of his application for extension of time, the appellant deposed that immediately when he was whisked into prison at Mpwapwa he expressed his intention to appeal and signed the notice and handed it over to the Officer Incharge of Mpwapwa prison. He blamed the Officer Incharge of prison for failing to forward to the Registrar of the High Court his notice of intention to appeal. The High Court (Hon.

Mjasiri, J. as she then was) held that the appellant failed to give good cause for the delay. The appellant was aggrieved, he appealed to this Court. In allowing the appellant's appeal this Court observed that;

*"Admittedly, it would have been a good idea for the appellant to secure an affidavit from the alleged officer incharge of Mpwapwa who is alleged to have failed to forward his notice of intention to appeal to the Registrar. But practically this would not have been an easy task. Firstly, being a prisoner he had little or no opportunity to cause the said officer swear to an affidavit. Secondly, assuming the said officer had really neglected to do his obligation, he would hardly admit to an act which could adversely affect his prospects. But what is more important is that, after the appellant had raised this in his affidavit in the High Court, if the learned State Attorney who prosecuted that application had some doubts about it, he would have countered it by filing a counter affidavit, and possibly by securing an affidavit from*

*the alleged official. He was freer to do so than the appellant who was a prisoner. But for unexplained reason or reasons, he neither countered it by an affidavit nor filed an affidavit from the alleged official. Under the circumstances, we are of the view that, the appellant should be given the benefit of doubt that he expressed his intention to appeal in time as deponed. We are satisfied that, had the learned Judge considered this ground in this line, she would have found this ground to be good cause for delay and that the appellant is not to blame."*

**Secondly;** in the case of **Nduruwe Hasani V. Republic, Criminal Appeal No. 70 of 2004** (unreported), the appellant, (Nduruwe Hassani) filed an application to the High Court seeking for enlargement of time to appeal in which he raised, as a reason for the delay, that he could not do so because at the material time the prison typewriter had broken down. In his counter affidavit and during the hearing the learned State Attorney argued that it was all hearsay and contended that only the prison Authorities should have sworn an affidavit to say the typewriter had broken down and not the

appellant. The High Court (Kaganda, J., as she then was) agreed with the State Attorney and dismissed the application. The appellant was aggrieved. He appealed to this Court. This Court had this to say;

*"... The simple questions to ask are, did anyone doubt the averment in the appellant's affidavit that the prison typewriter had broken down? Did the learned State Attorney have evidence to the contrary? If so, he should have given that evidence in his affidavit or obtain an affidavit from the prison to the effect that there was no such problem with their typewriter during the period the appellant was to have his petition of appeal typed and dispatched. In the alternative, if the High Court doubted the statement on oath from the appellant (the affidavit) that the typewriter had broken down, it could have ordered him to obtain a supporting affidavit from the Prison Officer Incharge or itself require the Prison Officer Incharge to file an affidavit relating to the condition of the typewriter.*



*We think that in the absence of contrary evidence it was not proper or fair for the High Court to reject the explanation which the appellant gave through his affidavit that there was no working typewriter at the prison and that was the cause for the delay to lodge a memorandum of appeal."*

It is beyond question that the prison Authority plays a central role in the administration of justice by among other things, processing, preparing and dispatching to our courts documents relevant to prisoners' legal demands. But, like many other institutions, they are not free from predicaments such as insufficient funds and working tools which impact negatively to their efforts to ensure that all the prisoner's demands are timely met. Cogent evidence is required to disprove this fact.

All that is insisted in the two cases quoted above is that the prisoners' explanations on the circumstances and difficulties they face should not be simply thrown overboard. Instead, they have to be given due weight in determining their fate.

In the instant application, the applicant have, in paragraphs 4 and 5 of his affidavit, stated that he was late in filing the notice of appeal because the necessary application was directed to the High Court instead of this Court.

Ms. Nunu Mangu, learned State Attorney, have in full strength supported the applicant's application. She is of the firm view that such reason constituted sufficient and good cause for delay.

I am also at one with the learned State Attorney. As amply demonstrated above, the applicant cannot be blamed over what happened. It was upon the prison authority to properly direct the applicant's application to this Court instead of the High Court. We have no evidence to the contrary or establishing inadvertence, inaction or even negligence on the part of the applicant. His story should therefore be believed.

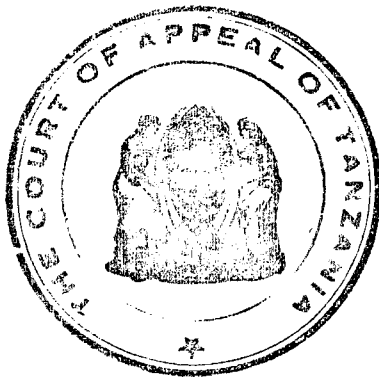
All said, I am satisfied that the applicant have established good and sufficient cause for delay in lodging his notice of appeal as required under Rule 10 of the Court of Appeal Rules. I accordingly allow the applicant's

application. He is hereby granted twenty one (21) days from today within which to lodge the notice of intention to appeal in this Court. I so order.

**DATED** at **MTWARA** this 28<sup>th</sup> day of July, 2016.

S.A. LILA  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.



  
E.Y. MKWIZU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**