

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MBEYA**

**(CORAM: MUGASHA, J.A., NDIKA, J.A. And SEHEL, J.A.)**

**CRIMINAL APPEAL NO. 11 OF 2017**

**JOSEPH SWEET.....APPELLANT**

**VERSUS**

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

**(Appeal from the Judgment of the High Court of Tanzania at Mbeya)**

**(Mshote, J.)**

**dated the 22<sup>nd</sup> day of August, 2001**

**in**

**Misc. Criminal Application No. 20 of 2001**

**.....**

**JUDGMENT OF THE COURT**

16<sup>th</sup> & 22<sup>nd</sup> August, 2019.

**SEHEL, J.A.:**

In the District Court of Mbozi sitting at Vwawa, the appellant and another person (hereinafter referred to as the co-accused) not subject to this appeal were jointly and together charged with two counts of burglary and stealing contrary to sections 294 and 265 of the Penal Code, Cap 16 RE 2002, respectively.

When the charge was read over to them, the appellant denied the charge while his co-accused pleaded guilty. The co-accused was convicted and sentenced on his own plea of guilty whereas a full trial against the appellant was conducted. After the conduct of the full trial, the appellant was found guilty on both counts. Consequently, he was convicted and sentenced to serve thirty (30) years imprisonment plus ten (10) strokes of a cane.

In his quest to challenge the conviction and sentence of the trial court, it is gathered from the record that he filed his notice of appeal in time but, as bad luck would have it, the appellant did not file his appeal within forty five days as prescribed under section 361 (3) of the Criminal Procedure Act, Cap 20 RE 2002 (the CPA). Thus, he filed Miscellaneous Criminal Application No. 20 of 2001 where he tried to impress upon the High Court to enlarge time within which to appeal against the decision of the District Court.

On 22<sup>nd</sup> August, 2001 the High Court (Mshote, J.) refused the application in the following words:

*"The question is whether the fact that the appellant was negotiating with his relatives to engage an advocate is a good cause. In my view, the applicant has not established good cause for the delay. Therefore, the application is refused."*

Undaunted, the appellant went back to the High Court and filed a similar application for extension of time. On 1<sup>st</sup> October, 2012 that application was dismissed as the court held itself "*functus officio*". However, he was advised to lodge an appeal against the refusal for extension of time. Since he was late, he sought an extension of time to lodge his notice of appeal whereby on 12<sup>th</sup> February, 2014 Ngwala, J. granted him fourteen (14) days extension of time.

On the 21<sup>st</sup> day of February, 2014 the appellant lodged a notice of appeal to this Court. Subsequent to that, he lodged a Memorandum of Appeal containing seven (7) grounds.

When the appeal was called on for hearing, the appellant appeared in person, unrepresented whereas the respondent/Republic was represented by Ms. Rhoda Ngole, learned Senior State Attorney and Baraka Mgaya, learned State Attorney.

Arguing the appeal, the appellant adopted his grounds of appeal and wished for the learned State Attorney to respond to his grounds.

In her brief submission, Ms. Ngole supported the appeal. She submitted that the appellant in his affidavit in support of the application for the

extension of time before the High Court had advanced good cause for the grant of the application. She referred us to paragraph 3 of the affidavit where the appellant deposed that he had lost communication with his relatives. She reasoned that the appellant could not have a means to communicate with his relatives because he appellant was in prison, thus his freedom was limited. She faulted the High Court for not considering this ground. She therefore urged us to allow the appeal.

In his rejoinder, the appellant had nothing much to say than to be set free.

As indicated earlier the appeal before us is against the refusal by the High Court for an extension of time to lodge an appeal out of time. Section 361 (2) of the CPA deals with extension of time. It provides as follows:

*"The High Court may, **for good cause** admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed."* (Emphasis added).

From the above, the criterion for extending time is good cause. Dealing with an identical situation, this Court, in the case of **Hassan Ismail @ Zulu v. Republic**, Criminal Appeal No. 205 of 2014 observed the following:

*"Under the above section the underlying factors for consideration in an application for extension of time is **good cause** for the delay. What the High Court had to consider in determining the application was whether the affidavit filed by the appellant to support his application gave good cause for the delay. The section does not elaborate on what constitutes **good cause** but normally, **it is the circumstances which led to the delay which the court has to look into and satisfy itself whether or not they constitute good cause.**" (emphasis supplied).*

As correctly, submitted by the learned Senior State Attorney, the fact that the appellant deposed under paragraph 3 of his affidavit, he lost contact with his relatives who were organizing for a lawyer to represent him, suffices to be a good cause. The appellant is a prisoner. He has not and could not have a means to reach out to his relatives to know what has befallen upon them. Looking at the Ruling of the High Court this reason was not considered. Had it been considered, it would have granted the extension of time to the appellant.

For the above reasons, we find merit into the appeal. In the interest of justice, we grant the appellant leave to file notice of appeal not later than ten (10) days from the delivery of this judgment and an extension of forty five

(45) days to lodge his appeal from the date of the lodging of the notice of appeal.

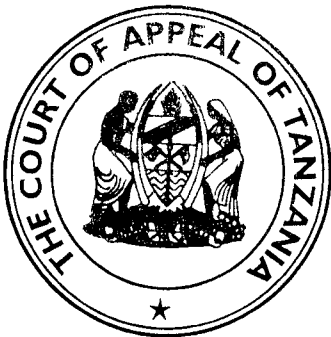
**DATED** at **MBEYA** this 21<sup>st</sup> day of August, 2019.


S. E. A. MUGASHA  
**JUSTICE OF APPEAL**

G. A. M. NDIKA  
**JUSTICE OF APPEAL**

B. M. A. SEHEL  
**JUSTICE OF APPEAL**

The Judgment delivered this 22<sup>nd</sup> day of August, 2019 in the presence of Ms. Rhoda Ngole, learned Senior State Attorney for the respondent Republic and the appellant in person is hereby certified as a true copy of the original.



  
B. A. MPEPO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**