

IN THE HIGH COURT OF TANZANIA
AT TABORA

APPELLATE JURISDICTION

MISCELLANEOUS () CRIMINAL APPLICATION NO. 30 OF 2006
ORIGINAL CRIMINAL CASE NO. 61 OF 2004 OF THE
DISTRICT OF URAMBO
AT URAMBO.

BEFORE J.A. KHALIKI; Esq. PRINCIPAL DISTRICT MAGISTRATE

HERIMATUS S/O SEBASTIAN @ KULUBONE.....APPLICANT
(Original Accused)

Versus.

THE REPUBLIC.....RESPONDENT
(Original Prosecutor)

RULING

23rd April, 2007 & 7th May, 2007

KIHIO, J

The applicant, Herimatus s/o Sebastian @ Kulubone filed this application for leave to give Notice of Intention to appeal out of time and to appeal out of time.

The applicant's Chamber Summons is supported by the affidavit sworn by the applicant, Herimatus Sebastian @ Kulubone.

The grounds for delay in giving Notice of Intention to appeal and appealing in time, as shown in the applicant's affidavit, is lack of office stationary in the prison office and availability of one working type writer in prison office.

The applicant is unrepresented while the respondent, Republic is represented by Mr. Mkoba, learned State Attorney.

The applicant submitted that the Prison authority informed him that it failed to prepare his (applicant's) Notice of Intention to appeal and Petition of appeal in time because there was no stationary at the prison office.

Mr. Mkoba submitted that the grounds raised for the applicant's delay in filing his appeal are not good cause. He further submitted that the applicant filed his application one year and four months after conviction and so it is clear that the applicant was satisfied with the conviction and sentence. He said that the applicant's application is brought as an afterthought. He referred this court to the case of Republic V. Yona Kaponda and nine others (1985) T.L.R. No.84 where the court held that "in deciding whether or not to allow an application to appeal out of time the court has to consider whether or not there is sufficient reasons not only for the delay but also sufficient reasons for extending the time during which to entertain the appeal." He argued that the applicant has not shown

sufficient reasons for delay and there are also no sufficient reasons for extension of time.

In reply, the applicant maintained that the Prison authority told him that there was no office stationary in the prison office.

I have carefully considered the submissions by the applicant and the learned State Attorney, Mr. Mkoba.

It is apparent that the applicant was convicted and sentenced on 21.6.2005.

The District court's judgement was certified on 2.8.2005. The records show that the applicant's Petition of appeal was prepared on 20.1.2006, five months and eighteen days from the day the appellant received the copy of the said District Court's judgement. The applicant found that his appeal was out of time and he filed this application on 19.10.2006 after one year and four months from the date he (applicant) was convicted and sentenced.

As I have already demonstrated, the grounds for applicant's delay in filing appeal in time, as shown in the applicant's affidavit, is lack of stationary in the prison office and availability of one working type writer in the said office. The Republic (respondent) did not counter the applicant's affidavit.

As correctly pointed out by Mr. Mkoba, the principle of Law laid by the court of Appeal of Tanzania in the case of Republic V. Yona Kaponda and

nine others (1985) T.L.R. No.84 is that; “In deciding whether or not to allow an application to appeal out of time, the court has to consider whether or not there are “sufficient reasons” not only for the delay but also “sufficient reasons” for extending the time during which to entertain the appeal”.

In my view, lack of stationary in the prison office is a sufficient reason for the delay in filing the applicant’s appeal in time. I find that there are points of Law which need determination by this court. Therefore, I find that there are sufficient reasons for extending the time during which to entertain the appeal.

I do not agree with Mr. Mkoba’s submission that the applicant has not shown sufficient reasons for delay in filing his appeal in time. I also do not agree with him that there are also no sufficient reasons for extension of time.

Finally I find that the applicant’s application succeeds and it is granted.

The applicant should give his Notice of Intention to appeal within seven days from today and file his appeal within ten days from the day of filing his Notice of Intention to appeal.


S.S.S. KIHIO

JUDGE

7.5.2007

COURT: - Judgement delivered in the presence of Mr. Rweyongeza,
Learned State Attorney and in the absence of the applicant.


S.S.S. KIHIO

JUDGE

7.5.2007