

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC CRIMINAL APPLICATION NO. 34 OF 2018

(Originating from the District Court of Mbulu at Mbulu, Cr Case No. 23 of 2014)

AZIZI MUSTAPHA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT.

RULING

30/10/2018 & 23/11/2018

MZUNA, J.:

Aziz Mustapha has filed this application for extension of time to file the Notice of Appeal out of time. The application has been preferred under Section 361 (2) of the Criminal Procedure Act, Cap 20 RE 2002.

The main issue is whether there is good cause shown for the delay?

Arguing his application, the applicant who was unrepresented asked for the court to adopt the filed affidavit. Reading from paragraph 2 of the said affidavit, it is said that he was convicted for the offence of defilement of an idiot vides Criminal Case No. 23 of 2014 at Mbulu District court. That

the cause for the delay was due to late service of copies of judgment and proceedings. Further that, he filed the notice at the first Prison where he served first. He then learnt that the same got lost. He prayed for this application to be allowed.

On his part, Mr. Charles Kagirwa, the learned State Attorney strongly objected this application for the reasons that the allegation that he was served with copies of judgment and proceedings late is not backed with copy of letter showing that he applied for same.

Further that even if he was served late, there is no reminder letter to support such argument. More so, that even in his affidavit, he did not show when did he receive it. Similarly, there is no proof for the alleged loss of the filed notice.

The learned State Attorney has asked for this court to dismiss the application as he has failed to account for each day of the delay citing the case of **Dar es Salaam City Council vs. S. Group Security Co. Ltd**, civil Application No. 234 of 2015, CAT at Dar es Salaam, unreported.

It was his view that there is no good cause shown for the delay and therefor his application is without any merit.

In his rejoinder, the applicant said that when they lodge the appeal, they are normally assisted by the Office of the Prison Officer, Admission Department as they are not versed with law. He prayed for this application to be allowed.

This court having carefully considered the reasons advanced for and against the application has the following to say. Generally speaking, powers to grant or not grant extension of time is a discretionary power vested to court. However, such powers must be exercised judicially.

The reasons advanced by the applicant is two fold; First that there was late service of copies of judgment though as well submitted by the learned State Attorney, there is no such letters to back up such argument. This argument I would say would fail because filing notice of appeal which is normally within 10 days "from the date of the finding or sentence" does not require the applicant to attach copy of the judgment and or proceedings.

Section 361 of the Criminal Procedure Act, Cap 20 RE 2002, which is relevant to this application reads:-

(1) Subject to subsection (2), no appeal from any finding, sentence or order referred to in section 359 shall be entertained unless the appellant–

(a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and

(b) has lodged his petition of appeal within forty-five days from the date of the finding, sentence or order,

save that

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

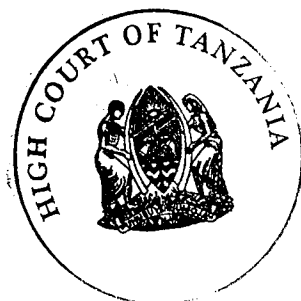
The wording of the said section 36 (1) (a) of the CPA, does not impose a mandatory requirement of copies of judgment and proceedings unlike where one lodges an appeal.


I would agree with him on the second ground that given the fact that he served in another prison prior to the current one, then the notice is more likely to have been misplaced or lost. The learned State Attorney says there was need to prove for the alleged loss. He did not elaborate but as he has said everything was handled by Prison Officers. The cited case of **Dar es Salaam City Council** (supra) is distinguishable to the facts pertaining in this case as in that case there was already application for extension of time which was refused but never accounted for the delay from the date of such refusal. I agree with the general principle laid down therein that one has to account for "every day of the delay".

The reasons advanced by the applicant, I consider to be good cause for the delay and therefore is a sufficient reason to allow this application.

For the above stated reasons, I allow this application in that the delay was caused by reasons beyond his control. The applicant is given 14 days within which to file the said Notice of Appeal.

It is hereby so ordered.




M. G. MZUNA,
JUDGE. 28/11/2018