

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA

MISC. CRIMINAL APPLICATION NO. 18 OF 2020
*(Originating from decision of the District Court of Serengeti at Mugumu
in Economic Case No. 59 of 2018)*

MAKURU S/O JOHN @ MOREMI APPLICANT
VERSUS
THE REPUBLIC RESPONDENT

RULING

Date of Last Order: 20/5/2020
Date of Ruling: 27/5/2020

KISANYA, J.:

This application for leave to lodge petition of appeal out of time against the decision of the District Court of Serengeti at Mugumu in Economic Case No. 59 of 2018 is made under section 361(2) of the Criminal Procedure Act, Cap. 20 R.E. 2002. It is supported by an affidavit of the applicant, Makuru John @Moremi sworn on **8.05.2020**.

Briefly, in its decision dated **30.07.2019**, the District Court of Serengeti at Mugumu convicted the applicant of offences of Unlawful Entry in the National Parks, Unlawful Possession of Weapons into the National Parks and Unlawful Possession of Government Trophies. He was then as sentenced to imprisonment for one year (for the first two offences) and twenty years (for the third offence).

The applicant was dissatisfied with the conviction and sentence. He lodged the notice of intention to appeal on **30.07.2019**. Upon receiving copy of judgement on **06.08.2019**, he appealed to this Court on **06.09.2019**. The said appeal was struck out on **17.12.2019** for being incompetent. The applicant was advised to lodge another petition of appeal subject to law of limitation. Therefore, the applicant filed the present application on **11.05.2020**.

During the hearing conducted through video conference, the applicant appeared in person while Mr. Nimrod Byamungu, learned State Attorney, represented the respondent.

In his submission, the applicant stated that he filed his appeal in time but the same was struck for being incompetent. He therefore prayed the Court to grant the application basing on the reasons advanced in the affidavit in support of the application.

In response, Mr. Byamungu objected the application. He submitted that the ground that the appellant's appeal was dismissed is not a good cause for the Court to extend time. He was of the view that the said ground shows negligence on the part of the applicant. On that note, the learned State Attorney urged me dismiss the application for want of merit.

The applicant rejoined by stating that he was assisted by the prison authority to prepare the petition of appeal which was struck out for being incompetent. Thus, he contended that, it was not his fault or negligence.

On my part, I wish to start by revisiting the relevant law governing filing of appeal before this Court. Pursuant to section 361(1)(b) of the Criminal Procedure Act, Cap. 20, R.E. 2019 (the CPA), the time within which to file petition of appeal is forty five (45) days from the date of findings, conviction,

sentence or order. But, the time used to obtain copy of judgement, proceedings is excluded in calculating the time limitation.

Despite of the time limitation, the Court has mandate of extending the time within which to file petition of appeal. This power is exercised if the Court is satisfied that there is good cause for extending the time as provided for under section 361(2) of the CPA. The applicant is therefore duty to demonstrate and advance the reasons which prevented him from filing the petition in time. In so doing, he has to account for each day of delay. This position was stated by the Court of Appeal in **Bushfire Hassan vs Latima Masaya**, Civil Application No. 3 of 2007 (unreported) where it was held that:

“Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain have to be taken.”

I have stated herein that, the Court must be satisfied that there is good case for extending the time limitation. In considering whether there is good cause, the Court considers different factors including the length of the delay; the applicant must account for all the period of delay and must show diligence and not apathy, negligence or sloppiness in prosecuting action that he intends to take. These factors have been underscored by the Court of Appeal in different case including the case of **Damas Asses and Another Vs Raymond Mgonda Paula**, Civil Application No. 32/17 of 2018, CAT at Dar es Salaam (unreported).

In the matter at hand, there is no dispute that the appellant had filed Criminal Appeal No. 133 of 2019 before this Court. The said appeal was transferred to the Resident Magistrate Court of Musoma-Extended Jurisdiction (Criminal Appeal No. 70 of 2019). I have gone through the record in the said appeal and satisfied that the petition of appeal was lodged in time. It was filed 30 days from

the date receiving copy of judgement. It is also not in dispute that the said appeal was struck for being incompetent on **17.12.2019**. In my opinion, the time used by the applicant in pursuing the said appeal constitutes to a good cause. This is based on section 21(1) of the Law of Limitation Act. I find that, the applicant filed the said appeal in good faith. Being a lay person, the applicant relied on the assistance from the prison authorities. Therefore, the delay accounted for by the applicant on this ground is up to **17.12.2019** when the appeal was struck.

However, the instant application was filed on **11.05.2020**. That was almost **115 days** from the date when his appeal was struck out. This period is more than the time (45 days) required to file petition of appeal from the date of conviction, sentence or order. The applicant has not accounted for the said 115 days. Thus, it is not known as to why it took the applicant such period of time to file the present application. The fact that the struck out appeal was filed in time is not in itself sufficient to extend the time. The applicant was required to show how he was prompt to take the necessary action from the time when his appeal was struck out.

Another ground stated by the applicant is deduced from paragraphs 6 of the affidavit. He avers that his rights in the case before the District Court of Serengeti were prejudiced. It appears he wanted to raise the ground of illegality. Although, ground of illegality is in itself sufficient to extend the time, it should be apparent on face of record. This position was held in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010, (unreported) when the Court of Appeal stated that:

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts/ it cannot in my view, be said that in VALAMBIA's case, the court

meant to draw a general rule that every applicant who demonstrates that his intended appeal raises point of law should, as of right, be granted extension of time if he applies for 'one. The Court there emphasized that such point of law must be that of sufficient importance and, I would add that, it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process"[Emphasis is mine].

In the instant application, the applicant did not explain as to how his rights were seriously prejudiced. I have also read the petition of appeal (Criminal Appeal No. 133 of 2019 (High Court)/Criminal Appeal No. 70 of 2019 (RM of Musoma-Extended Jurisdiction) which was struck out, and found that the said issue was not raised therein. Therefore, the ground of illegality cannot stand because it is not apparent on face of record.

To this end, I hold that the applicant has failed to establish the good cause for the Court to extend time to appeal. Hence, the application is dismissed for being meritless.

DATED at MUSOMA this 27th May, 2020.




E. S. Kisanya
JUDGE
27/05/2020

Court: Ruling delivered this 27th day of May, 2020 through video conference in attendance of the Applicant in person and Mr. Yesse Temba, learned State Attorney for Respondent.


E. S. Kisanya
JUDGE
27/05/2020

Court: Right to appeal to the Court of Appeal is full explained.




E. S. Kisanya
JUDGE
27/05/2020