

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SONGEA DISTRICT REGISTRY)**

AT SONGEA.

MISC. CRIMINAL APPLICATION NO. 18 OF 2020

(Originating from Criminal Case No. 38 of 2019 of Tunduru District Court)

FATUMA SAID ALLY APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

Date of last Hearing 29/06/2020

Date of Ruling: 13/07/2020

RULING.

I. ARUFANI, J.

The applicant, Fatuma Said Ally filed in this court an application seeking for leave of the court to lodge in this court both the notice of appeal and appeal out of time prescribed by the law. She intends to challenge the decision of the District Court of Tunduru delivered in Criminal Case No 38 of 2019 dated 22nd May, 2019. The application is made under section 361 (1) (a), (b) and (2) of the Criminal Procedure Act, Cap 20, R.E 2002 and is supported by the affidavit sworn by the applicant. The respondent opposed the application by filing in the court the counter affidavit sworn by Generosa Montano, State Attorney.

The application was heard via video link. While the applicant was heard in person, unrepresented from Songea prison the respondent was represented by Ms. Tulibake Juntwa, learned Senior State Attorney who

was in the court premises. The applicant was very brief in her submission. She simply told the court that, the reason for her failure to appeal within the time prescribed by the law is because after being convicted and taken to the prison she became confused and she was not informed about her right to appeal.

The learned Senior State Attorney told the court that, as indicated in the counter affidavit they have filed in this court they are opposing the application. She argued that, after going through the affidavit of the applicant and considered what she has stated to the court they have found the reason for the applicant to fail to issue a notice of intention to appeal and lodged her appeal in the court within the time prescribed by the law is because she was mentally unhealthy.

She submitted that, the stated reason for the delay is not supported by any evidence like medical record to show she was mentally unhealthy and has ever got any treatment for being mentally unhealthy. She said there is no even an affidavit from any officer of the prison where she is serving her sentence filed in the court to support her argument that she failed to appeal within the time prescribed by the law because of being mentally unhealthy. She argued that, the submission by the applicant that she was not informed about her right to appeal is contradicting with her submission that she was mentally unhealthy because if she was mentally unhealthy it would have not been possible to inform her about her right to appeal.

She argued further that, after taking into consideration it is almost one year which has passed from when the applicant was convicted up to when the application at hand was filed in this court it is their views that, the applicant was satisfied with the decision and sentence imposed to her by the trial court and the application she has filed in this court is an afterthought. Finally she prayed the application to be dismissed in its entirety for devoid of merit.

In her rejoinder the applicant stated that, the proof that she was mentally unhealthy is known to the prison authority where is serving her sentence. She said she was not aware of her right to appeal and after being informed about her right to appeal is when she decided to file the application at hand in this court. At the end she prayed the court to assist her and said she has children who are depending on her, she has no father and her mother is old.

Having carefully considered the submissions made to the court by both sides and after going through the affidavit supporting the application and the counter affidavit filed in the court to oppose the application the court has found that, the issue to determine in this application is whether the applicant was delayed by good cause to lodge in the court both notice of intention to appeal and the appeal within the time prescribed by the law. Framing of the above issue is based on the fact that the provision of the law upon which the application is made requires good cause for the delay to be shown to move the court to allow the appeal to be lodged in the court out of time prescribed by the law.

The term "good cause" is not defined in the provision of the law upon which the application is made or any other provision of the law. However, in numerous cases decided by this court and the Court of Appeal of Tanzania like the case of **Aidan Chale V. R**, Criminal Appeal No. 130 of 2003, CAT at Mbeya (unreported) it has been taken to be synonymous with the term "sufficient cause". The term "sufficient cause" was considered by the Court of Appeal of Tanzania in the case of **Tanga Cement Company Limited V. Jumanne D. Masangwa & Another**, Civil Application No. 6 of 2001 cited in the case **Benedict Mumello V. Bank of Tanzania**, Civil Appeal No. 12 of 2002, CAT at DSM (unreported) where the Court of Appeal stated that:-

"What amount to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant."

The Court of appeal of Tanzania dealt with the same issue of what the court is required to take into account in determining the application for extension of time in the case of **Elias Msonde V. R, Criminal Appeal No. 93 of 2005** and Mandia, JA (as he then was) stated that:

"We need not belabor, the fact that it is now settled law that in application for extension of time to do an act required by law, all that is expected of the applicant is to show that he was prevented by sufficient or reasonable or good cause and that

the delay was not caused or contributed by dilatory conduct or lack of diligence on his part”.

While being guided by the above stated position of the law the court has found the explanation given by the applicant in the application at hand as the reason for her delay to lodge in the court her notice of intention to appeal and the appeal within the time prescribed by the law as deposed at paragraph 4 of her affidavit is that, she was shocked after being imprisoned and she became mentally unhealthy. She also threw her blames to the prison officers by deposing at paragraph 5 of her affidavit that they failed to assist her on time while her mental was unhealthy and her freedom had been curtailed by law.

The court has considered the above stated reason and find as rightly argued by the learned Senior State Attorney is not supported by anything to show the applicant became mentally unhealthy after being imprisoned and that caused her to fail to lodge her intention to appeal and the appeal in the court within the time prescribed by the law. The court has found it is not only that there is no any medical evidence or even affidavit from the prison authority where the applicant is serving her sentence was brought to the court to support her deposition that she became mentally unhealthy after being taken to the prison but also there is no even explanation or elaboration to show what type of mental unhealthy was affecting her for the period of one year she delayed to lodge her notice of intention to appeal and the appeal in the court within the prescribed time.

The court has found that, although in many applications of this nature sickness has been accepted as a good and sufficient ground for granting extension of time but as stated in the case of **Shembilu Shefaya V. Omary Ally**, [1992] TLR 245 there must be proof or sufficient and acceptable elaboration of the alleged ill health condition. To the view of this court if the applicant was really suffering from mental unhealthy decease as she deposed in her affidavit she was required to explain to the court as to when exactly she became fit to work on filing her appeal in the court for the purpose of accounting for the whole period of the delay. To the contrary she has not stated when she became fit.

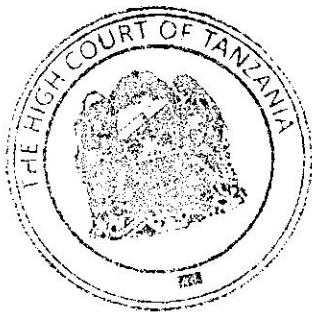
The court has also considered the blame thrown to the Prison Authority by the applicant that they didn't inform her about her right to appeal but failed to see any merit in her blame. The court has arrived to the above finding after seeing that, even if she was not informed by the prison authority about her right to appeal but the typed proceedings of the case which she intend to appeal against if extension of time will be granted shows that, after being convicted and sentenced, she was informed about her right to appeal by the trial court. Therefore her blame to the Prison Authority which is not supported by any evidence from the Prison Authority has no any basis.

Since the applicant has not been able to satisfy the court she was really mentally unhealthy as she alleged and if she was mentally unhealthy when she became fit the court has found the applicant has no valid explanation for the delay to file in the court her notice of appeal and the appeal for the period of one year. That makes the court to find that, the

applicant was not diligent in pursuing for her right and as rightly argued by the learned Senior State Attorney the application she has filed in this court is just an afterthought.

In the premises the court has found the applicant has not been able to satisfy the court she was delayed by good cause for the period of one year to lodge her notice of intention to appeal and the appeal in the court so as to move the court to exercise its discretionary power to grant her extension of time is seeking from this court. Consequently, the application is hereby dismissed in its entirety for devoid of merit. It is so ordered.

Dated at Songea this 13th day of July, 2020



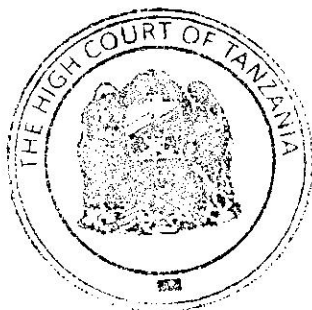
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JUDGE

13/07/2020

Court:

Ruling delivered today 13th day of July, 2020 in the presence of the applicant in person and the respondent is represented by Ms. Tulibake Juntwa Senior State Attorney. Right of Appeal is fully explained.



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JUDGE

13/07/2020