

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 38 OF 2020

*(Originating from Criminal Case No. 121/2019 of the Resident Magistrates Court of
Kibaha at Kibaha)*

LIGHTNESS ARON MANGI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Date of last Order: 28/5/2020

Date of Ruling: 02/07/2020

MLYAMBINA, J.

This application has been made under *Section 361 (2) and 368 (1 (a) (i) of the Criminal Procedure Act, Cap 20 [R.E. 2002]*. The applicant sought for the following relief(s):

1. That, this honorable court admit the appeal notwithstanding that the period of limitation has elapsed as per section 361 (1) (a) and (b).
2. That, this honorable court admit and grant an application for bail pending the hearing of appeal.
3. Any other relief (s) this honorable court deems just and fit to grant, be so granted.

The application was supported with an affidavit of Lightness Aron Mangi, the applicant. At the hearing, Counsel Tumaini Mgonja for

the applicant opted to address the prayer for extension of time to file appeal out of time only.

The reasons in support of the application, as submitted by Counsel Mgonja, are contained under paragraph 4, 5 and 6 of the supporting affidavits which states:

- 4. That, I am declaring further that after the conviction I was transferred from Kibaha to Segerea Prison, Dar es Salaam where currently I am serving a sentence of four years imprisonment.*
- 5. That, I am declaring further that, after conviction and starting to serve the said sentence in Segerea, I could not get an access of even legal assistance to appeal or even an access to be supplied with copies of judgement.*
- 6. That, I am declaring further that, through my sister's efforts, namely Jane Macha, I got a copy of judgement and a case proceeding on 28th January, 2020 a lapse of nearly two months since the judgement.*

The application was resisted by the republic through Senior State Attorney Credo Rugaju. However, the following facts are not in dispute. **One**, the applicant herein was charged with the offence of Grievous Harm Contrary *Section 225 of the Penal Code Cap 16 (R.E. 2002)*. **Two**, after hearing, the applicant was convicted as

charged and sentenced to serve four years imprisonment. **Three**, the conviction and sentence is dated 29th November, 2019. **Four**, the applicant is serving her sentence at Segerea Prison. **Five**, this application was filed on 28th January, 2020, that being a delay of not less than two months. **Six**, *Section 361 (1) (a) (b) of the Criminal Procedure Act* (supra) of which this application is made, requires that any person wishes to appeal to the High Court from any finding, sentence or order made by subordinate court to give notice of his/her intention to appeal within ten days from the date of the finding, sentence or order and to make sure that he has lodged his appeal within forty five days from the date of finding, sentence, or order.

State Counsel Credo Rugaju has, however, objected the application on reason that the applicant has not advanced sufficient cause. According to Mr. Rugaju, the applicant was given right to appeal on 28th November, 2019. Thus, the allegation that she got assistance from her relative is not supported. It is an afterthought. It was stated by Mr. Rugaju that, if true there was no legal assistance at the prison, there should be an affidavit of the Prison Officer.

In consideration of the afore positions, I agree with the State Counsel, Mr. Rugaju in that an affidavit from the Prison Officer is required to prove lack of legal assistance.

However, the important factor to be considered in application of this nature is proof of sufficient cause. The applicant has a legal duty to furnish the prof for delay, as stated in the case of **Azizi Mohamed v. R.** *Criminal Application No. 84 of 2019* Court of Appeal of Tanzania (unreported).

In this case, State Counsel Rugaju told the court that the applicant was furnished with the copy of judgment on the very date the judgement was pronounced. There is no proof to that effect. The applicant on her party told the court that she got the copy of judgement and proceedings on 28/01/2020 through her sister, as she is serving her sentence at Segerea Prison.

I have perused the copy of judgement and proceedings. The copy of judgement does not show the date of certification. The copy of proceedings shows that it was certified on 20th December, 2019. That means, the applicant was not served with the copy of proceedings within 10 days for her to lodge the notice of appeal. In the case of **Elias Msonde v. R.**, *Criminal Appeal No. 93 of 2005* (unreported), the court held:

All that is expected to 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.

In this case, the applicant status of being a convict who was transferred from Kibaha to Segerea, cannot be taken to constitute insufficient reason. Moreso, the delay to obtain both copies of judgement and proceedings are sufficient reasons to grant this application.

In the end, the application for extension of time within which to lodge an appeal is granted. The applicant is given 14 days to lodge the required notice and appeal.



Y. J. MLYAMBINA

JUDGE

02/07/2020

A handwritten signature in blue ink, written over a circular stamp, with a long horizontal line extending to the right.

Ruling delivered and dated 2nd July, 2020 in the online presence of the applicant and her Counsel Tumaini Mgonja and Deborah

Michoro, State Attorney for the respondent. Right of appeal explained.



Y. J. MLYAMBINA

JUDGE

02/07/2020

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned to the right of the printed name and date.