

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. CRIMINAL APPLICATION NO. 33 OF 2017

(Originating from Bariadi District Court, Criminal Appeal No.18/2015 and Nyakabindi Primary Court, Criminal Case No.19 of 2015)

MARIAM MAKWANIAPPLICANT

VERSUS

AFRICAN INLAND CHURCH TANZANIARESPONDENT

RULING

11/11/2019 & 10/02/2020

G. J. MDEMU, J.;

The Applicant moved this Court under the provisions of section 25 (1) (b) of the Magistrate's Courts Act, Cap. 11 seeking an extension of time within which to file an appeal challenging the decision of the District Court of Bariadi, in Criminal Appeal No.18 of 2015. The decision is dated 13th day of May, 2015. The application is supported by an affidavit sworn by the Applicant herself on 21st December, 2017.

The history of this application is dated way back to 6th of December 2017 when this court (Kibella J.) did struck out the appeal of the Applicant following objection raised by the Respondent. The record reads:

Order: prayer by Mr. Mhingo, learned counsel which has been conceded by the Appellant is hereby granted. The appeal which is incompetent for joining two different Respondents is hereby struck out.

On 27th of December 2017, that is, after almost 20 days from the striking out of the appeal, this application to extend time to appeal got to this Registry.

When this application came for hearing on the 11th of November 2019, the Applicant fended for herself whereas the Respondent African Inland Church Tanzania enjoyed the services of Ms. Haleluya Omendu, learned Advocate. In her submission, the Applicant prayed to Court to adopt her affidavit as it is forming part of her submission, while at the same time praying her application be allowed by this court.

In reply, Ms. Haleluya Omendu, learned Advocate submitted that, paragraph 5 of the affidavit, on reasons for the delay, has not indicated sufficient cause for the purpose. She added that, in terms of the provisions of section 25 (1) (b) of the Magistrate's Courts Act, Cap. 11, the Applicant has not demonstrated anything from 2017 when the decision was made, hence therefore the instant application. She further submitted that, the Applicant failed to show good cause to warrant extension of time. She therefore, asked this Court to struck out the application. The Applicant, in her rejoinder added new facts such that, she was in Prison and also was sick, that is why she delayed to appeal on time. She therefore reiterated her previous position to have this application allowed.

Having carefully gone through submissions of both parties, it is trite law that, for this court to exercise its discretion to extend time to appeal, the Applicant must satisfy to Court that, there are sufficient and good cause for the delay as was held in the case of **Salum Nhumbili V. Republic, Criminal Application No.8 of 2014**, and **William Ndingu @ Ngoso V. Republic, Criminal Appeal No.3 of 2014** (both unreported).

In the instant application, the Applicant in her affidavit in paragraph 5 stated the following regarding delay:


That the delay to file my appeal was not contributed by any negligent act on my part.

As it is, grounds to extend time, if any, in the instant application, are technical one. The Applicant had her appeal No.16 of 2015 in time before this court. For reasons stated in the order of this court dated 6th of December, 2015, the appeal was struck out for joining wrong parties. As stated earlier on, within 20 days, the Applicant made this application for extension of time. I therefore agree with the Applicant that, the striking out of her appeal filed in time, are reasons beyond her control and therefore, as deposed by the Applicant in her affidavit, the delay was not contributed by any negligent act on her part.

I do not however subscribe to her submission that, the delay to have the appeal in time was due to her being in Prison and also that, she was sick. She did not depose this in her affidavit leave alone failure to indicate which prison she was detained and serving which sentence.


Notwithstanding, I am satisfied that, there are sufficient cause indicated by the Applicant to have time extended to appeal to this court. In view thereof, and in terms of the provisions of section 25 (1) (b) of the Magistrate's Court Act, Cap.11, time to appeal to this court is extended for a period of thirty (30) days from the date of this ruling. Each part to bear own costs of this application. It is so ordered.




G. J. Mdemu
JUDGE
10/02/2020

DATED at Shinyanga this 10th day of February, 2020.




G. J. Mdemu
JUDGE
10/02/2020