

IN THE HIGH COURT OF TANZANIA AT TABORA

MISC. CRIMINAL APPLICATION NO. 37 OF 2020

IN THE MATTER OF THE COURT OF APPEAL OF TANZANIA AT TABORA

CRIMINAL APPEAL NO.190 "B" OF 2012

AND

IN THE MATTER OF THE HIGH COURT OF TANZANIA AT TABORA

DC CRIMINAL APPEAL NO.117 OF 2010

AND

IN THE MATTER OF ARISING FROM THE DISTRICT COURT OF KIGOMA

DISTRICT

AT KIGOMA

ORIGINAL CRIMINAL CASE NO.64 OF 2010

SELEMANI S/O ISAYA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

BAHATI, J.:

The applicant lodged the application seeking for extension of time to give the notice of appeal to the Court of Appeal of Tanzania and any other order or relief this honourable court may deem fit and just to grant. The application is made under Section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2002. It is accompanied by an affidavit deposed by the applicant. The facts as deposed in the affidavit inter alia materially run;

1. *That, he was arraigned before the District Court of Kigoma District at Kigoma (The Trial Court), jointly and together with HAMIS S/O YAZIDI (not a party to this application) for the offence of armed robbery. Upon guilty verdict by the trial court, they were all convicted and sentenced to serve a custodial sentence of thirty (30) years in jail each. This was on 21/5/2010, In Criminal Case No. 64 of 2020(BAHA-RM).*
2. *That, dissatisfied, they all gave notices of appeal intending to challenge the decision of the trial court to this court. Subsequently, they managed to Lodge DC Criminal Appeal No.117 of 2010 before the High Court of Tanzania at Tabora which was dismissed for lacking merit. (WAMBALI, J) dated 28/9/2012.*
3. *That, undaunted, they appealed to the Court of Appeal of Tanzania at Tabora Vide Criminal Appeal No. 190 "B"2012.The same was struck out by the bench for being incompetent before the Court.*

4. *That, following the appeal being struck out, they stayed for a long time without the court supplying him with the ruling for him to be able to apply for extension of time, before the High court, for giving the notice of appeal to the court of Appeal.*
5. *That, eventually, the Ruling of the Court was supplied to him on 22/10/2019, hence, this application.*
6. *That, the reason for the delay was occasioned by the Court of Appeal's failure to supply him with the ruling in time.*
7. *That, there is a point of law involved in the decisions sought to be appealed against (of both the trial court and the first appellate court) of sufficient importance, in that there was unfair trial at the time the applicant and another were tried before the trial court, which needs to be looked at by the highest court of the land.*
8. *That, the irregularity alluded to in paragraph 8 of his affidavit occasioned a miscarriage of justice on his party*
9. *That, it is the law that a decision of the court arrived at upon denial of the accused right to a fair trial cannot stand, and it is immaterial whether the same has been arrived at in the absence of any other violations.*

In this application, the Applicant appeared in person while Mr. Tumain Pius learned State Attorney appeared for the Respondent, the Republic.

The applicant, being a layperson, prayed to this court his application to be adopted as part of his submission.

On the other hand, the learned State Attorney supported the application.

Having considered the application, the affidavit supporting it, the record in general and the arguments by the learned state attorney for the Republic, and the law. Though the application is not contested, I am bound by the law to decide it according to the law and merits. The question for determination in this matter is, therefore whether or not the application is meritorious. This matter being an application for extension of time, it must be subjected to the test set by the law on the subject. It is trite and the general rule that, extension of time is granted at the discretion of the court, exercised judiciously, upon the applicant adducing sufficient reasons. This position has been religiously underscored by various court decisions, see, for example, the decisions by the CAT in **MUMELLO V. BANK OF TANZANIA(2006) 1 EA 227** and it is envisaging in the case of **ADMINISTRATOR GENERAL V. MWANAARABU RAJABU AND OTHERS,(1980) TLR 304.**

"I am also alive of the fact that, it is difficult to define the phrase "sufficient reasons" or "sufficient cause" as far as an issue of extension of time is concerned.

However, the same was adequately illustrated by the CAT in **MUMELLO V.BANK OF TANZANIA CASE (supra)** quoting with approval its previous decision by a single Judge in **TANGA CEMENT COMPANY LTD V. JUMANNE D. MASANGWA AND ANOTHERS, CIVIL APPLICATION NO.**

6 OF 20001(unreported). The CAT described the phrase by the following words;

“What amounts to sufficient cause has not been defined? From decided cases, a number of factors have 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 sub-question here is, therefore, whether the applicant in the matter at hand has adduced sufficient reasons for this court to grant the application.

In my view, the circumstances of this matter are in favour of answering the question affirmatively. This view is based on the following ground, it is apparent that the Applicant acted diligently in perusing his substantive right of appeal by presenting his notice of intention to appeal. I am also satisfied with the reasons advanced by the applicant that the delay to file his appeal was caused by the failure of the trial court to supply him with necessary documents to file his appeal on time as stated in paragraph 5 of his affidavit.

The requirement of accounting for every day of delay has been emphasized by the Court in numerous decisions; examples are such cases of **BUSHIRI HASSAN V. LATIFA LUKIO, MASHAYO, CIVIL**

**APPLICATION NO. 3 OF 2007 (UNREPORTED) and KARIBU TEXTILE MILLS
V. COMMISSIONER GENERAL (TRA), CIVIL APPLICATION NO. 192/20 OF
2016 (UNREPORTED).** In the Bushiri Hassan case, the Court stated:

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

Owing to the reasons shown above, which the said reasons are also supported by the Republic as demonstrated in the affidavit, the applicant has adduced sufficient reasons for the extension of time. The application at hand is meritorious therefore allowed. The applicant shall file the notice of intention to appeal to the Court of Appeal of Tanzania within 30 (thirty) days from the date of this order.

Order accordingly.

A.A. BAHATI

JUDGE

02/09/2020

Ruling delivered under my hand and seal of the court in chamber, this 2nd day October, 2020 in the presence of Ms. Flavia Francis for the applicant and Miraji Kajiru Senior State Attorney for the Republic.

A.A. Bahati

A.A. BAHATI

JUDGE

02/09/2020

Ruling delivered under my hand and seal of the court in chamber,
this 2nd day October, 2020 in the presence of the applicant and Mr. Miraji
Kajiru Senior State Attorney for the Republic.

A.A. Bahati

A.A BAHATI

JUDGE

02/10/2020

Right of appeal explained.



A.A. Bahati

A.A BAHATI

JUDGE

02/10/2020