

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF MBEYA**  
**AT MBEYA**

**MISC. CRIMINAL APPLICATION NO. 171/2019**

*(Originate from Vwawa Resident Magistrate Court PI Case No. 16/2019)*

<b>1. HAMZA HUSSEIN MPONGOLO</b>	}	<b>..... APPLICANTS</b>
<b>2. BONIFACE WILLIAM MWAKABANJE</b>		
<b>VERSUS</b>		

**THE REPUBLIC ..... RESPONDENT**

**RULING**

*Date of Ruling:*   **25.02.2020**

**Dr. A. J. MAMBI, J.**

This is an application filled by the applicants (**HAMZA HUSSEIN MPONGOLO & BONIFACE WILLIAM MWAKABANJE**) for an extension of time to file an appeal out of time. The applicants in their application (**MISC. CRIMINAL APPLICATION 171/2019**), have prayed to this court to allow him to file appeal against the decision made by the District Court. The application is supported by an affidavit where the applicants have stated their reasons for their delay.

During hearing the applicants appeared unrepresented while the republic was represented by the learned State Attorney Mr. Sanga.

In their submission, the applicants briefly submitted that they have filed their application supported by an affidavit. They argued that he has sufficient reasons to do so. The applicants briefly submitted that they rely with their reasons under his affidavit. They argued that they delayed due to the prison procedures and failure to get a copy of proceedings and judgment in time.

In reply to the applicants' application, the respondent, the learned State Attorney Mr.Sanga supported this application on the ground that the application was filed in line with the provision of the law and he has good Cause in his affidavit.

I have considerably perused the documents and considered the submissions made by the applicants to find out whether this application have merit or not. My findings will be based on determining the issue as to whether the applicants have advanced sufficient reasons for this court to consider their application for an extension of time to file an appeal out of time.

It is clear from the records that the applicants who are in the prisons have advanced sufficient reason for the delay as such delay was beyond their control. The position of the law and case studies are clear that where any party seeks for an extension of time to file an appeal out of time he is required to

advance sufficient reasons in his affidavit before the court can consider and allow such application. This position was clearly underscored by the Court of Appeal of Tanzania in **REGIONAL MANAGER, TANROADS KAGERE V. RUAHA CONCRETE COMPANY LTD CIVIL APPLICATION NO.96 OF 2007 (CAT unreported)**. The court in this case observed that;

*“the test for determining an application for extension of time, is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted”.*

This means that in determining an application for extension of time, the court has to consider if the applicants have established sufficient cause or good cause as to why the sought application is to be granted. In other words, the court needs to take into account factors such as reasons for delay that where the applicants are expected to account of cause for delay of every day that passes beyond the aforesaid period, lengthy of the delay that is to shown such reasons were operated for all the period of delay.

In the application before this court, the applicant in their affidavit have clearly indicated that they had sufficient reasons for their delay and being at the prison also contributed in their delay.

I have perused the applicants’ document including their affidavit in line with his submission and found that the applicant have indicated reasonable or sufficient cause to enable this court to consider and grant their application.

Indeed, the question as to what it amounts to “sufficient cause” was underscored in **REGIONAL MANAGER TANROADS KAGERA VS RUAHA CONCRETE CO LTD CIVIL APPLICATION NO 96 of 2007**, where the court observed the following:-

*“What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means **the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules**”(emphasis supplied).*

Similarly, The Court in **TANGA CEMENT AND ANOTHER CIVIL APPLICATION NO 6 OF 2001** clearly held that:

*“What amounts 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 delay; lack of diligence on the part of the applicant”.*

Reference can also be made to the decision of Court of Appeal in which held that:

**MOBRAMA GOLD CORPORATION LTD Versus MINISTER FOR ENERGY AND MINERALS, AND THE ATTORNEY GENERAL, AND EAST AFRICAN GOLDMINES LTD AS INTERVENOR, TLR, 1998 Page 425**

*“It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents’ delay does not constitute a case of procedural*

*abuse or contemptuous default and because the applicant”  
will not suffer any prejudice, an extension should be granted.*

Now since the applicant has advanced and presented sufficient reasons for delay and the extent of such delay in his application, I have no reason to dis-grant his application. I am of the considered view that this application has merit and this court finds proper the applicants to be granted an extension of time to appeal out of time. The applicants shall file their appeal fourteen days from the date of this ruling.



**DR. A. J. MAMBI**  
**JUDGE**  
**25.02.2020**

Ruling delivered in Chambers this 25<sup>th</sup> day of February 2019 in presence of both parties.



**DR. A. J. MAMBI**  
**JUDGE**  
**25.02.2020**

Right of appeal explained.



**DR. A. J. MAMBI**  
**JUDGE**  
**25.02.2020**