

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

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 203 OF 2017

*(Criminal Appeal No. 171 of 2017 from the High Court of Tanzania the Judgement by
Hon. Sameji, J. dated 4th day of August, 2017)*

DIRECTOR OF PUBLIC PROSECUTIONS.....APPLICANT

VERSUS

LUSEKELO DAUDI.....RESPONDENT

RULING

Date of last Order: 08/10/2020

Date of Ruling: 15/10/2020

MLYAMBINA, J.

By way of Chamber Summons made under *Section 378 (1) (2) and 379 (2) of the Criminal Procedure Act, Cap 20 [R.E. 2009]*, the Applicant sought for the following relief(s):

1. That, this Honourable Court be pleased to grant extension of time to file Notice and Petition of Appeal out of time in Criminal Appeal No. 171 of 2017 in the High Court of Tanzania at Dar es Salaam dated 4th August, 2017.
2. Any other order that the Court deems just and fit to grant.

The application was supported with an affidavit of Ellen Masululi, State Attorney. The reasons contained in the supporting affidavit are: **One**, upon judgement the Director of Public Prosecution

intended to appeal. **Two**, it was during the same time when the office of the Director of Public Prosecutions, Dar es Salaam Regional Office had shifted from Benjamin Mkapa Tower to the Ministry of Constitution Building along Mkwepu Street. **Three**, the said shifting procedure had caused a number of files being misallocated including this application. **Four**, it was after the office had settled way after expiry of time that the file was traced, hence opting to appeal out of time.

It is very unfortunate the Respondent never appeared despite of proper service being effected, including by way of publication through Habari Leo News Paper dated 24th August, 2020, 26th August, 2020 and 28th August, 2020.

At the hearing, Senior State Attorney Credo Rugaju moved the Court to grant the application based on the reasons given in the supporting affidavit.

I have had time to go through the records. I noted: **First**, the Respondent herein was charged before the Kinondoni District Court through Criminal Case No. 339 of 2016 with the offence of Grievous Harm Contrary *Section 225 of the Penal Code Cap 16 (R.E. 2002)*. **Second**, after hearing, the Applicant was convicted as charged and sentenced to serve four years imprisonment. **Third**, the conviction

and sentence is dated 27th April, 2017. **Fourth**, on appeal to this Court the Respondent was acquitted and there was no appeal filed in time. Hence this application.

In application of this nature, the Applicant has a sole duty of accounting for each day of delay, as stated in the case of **Azizi Mohamed v. Republic**. *Criminal Application No. 84 of 2019* Court of Appeal of Tanzania (unreported). I have considered whether the Applicant has adduced sufficient cause. The Applicant has miserably failed to account for the delay from 4th August, 2017 when the appeal was dismissed to 27th November, 2017 when this application was filed. It is a delay of almost three months. In the case of **Elias Msonde v. Republic**, 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 the instant application, the Applicant's reason for the delay is that of shifting the office from Benjamin Mkapa Tower to the Ministry of Constitution Building along Mkwepu Street. We are not told as to when such shift was done and it took how many days.

The Applicant has also stated that the said shifting procedure had caused a number of files being misallocated including this application. There is nothing in evidence establishing when this application file was traced. It remains a general statement that the files were misplaced and later found. The Applicant has further stated that it was after the office had settled way after expiry of time that the file was traced. There is no clear evidence as to when the file was traced exactly. In general, the Applicant has failed to account each day of delay, and so the Applicant has not supplied the Court with sufficient material to grant this application.

In the upshot, the application for extension of time within which to file Notice and Petition of Appeal out of time is dismissed. It is so ordered.

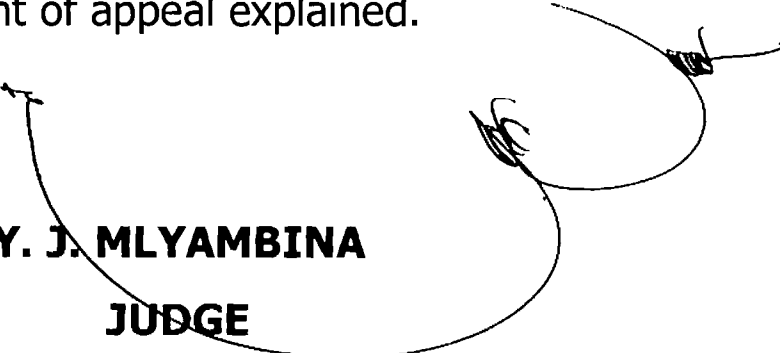
A handwritten signature in black ink, appearing to read 'Y. J. MLYAMBINA', is written over a large, thin-lined circular scribble.

Y. J. MLYAMBINA

JUDGE

15/10/2020

Ruling delivered and dated 15th October, 2020 in the presence of Imelda Mushi, State Attorney for the Applicant and in the absence of the Respondent. Right of appeal explained.



Y. J. MLYAMBINA
JUDGE
15/10/2020