

IN THE HIGH COURT OF TANZANIA

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 45 OF 2020

(Original Criminal Case No. 175/2019 from Nkasi District Court)

ALLY S/O KIBWE.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

(Application for extension of time to file notice of intention to appeal and petition of appeal to this court from the decision of Nkasi District Court)

RULING

16th - 19th November, 2020.

MRANGO, J

This is a ruling in respect of application for extension of time, that is to say leave be given for him to file both notice of intention to appeal and appeal itself outside the statutory time lodged by applicant's namely **ALLY S/O KIBWE** (Henceforth the applicant), The application is made under **section 361(2) of the Criminal Procedure Act, Cap 20, RE. 2002**, (herein referred as "**the CPA**"). The same is supported by the affidavits sworn, drawn and filed by the applicant himself and that of the Officer Incharge of Mollo Prison-Sumbawanga.

When the application was called on for hearing, the applicant appeared in person, unrepresented; whereas, the respondent *cum* republic had a legal services of Mr. Fadhili Mwandoloma – learned Senior state attorney. The hearing proceeded orally.

Arguing for the application, the applicant prayed to this court to adopt the affidavit he filed. He had nothing more to add.

In reply, Mr. Fadhili Mwandoloma supported the application by the applicant. He said the applicant has advanced sufficient reasons for the prayer to be granted.

I have gone through this court's records and the respective submissions by both parties. The question for determination is whether the applicant has been able to advance sufficient reason for the delay.

It is a cardinal principle that when the time has expired, there must be explanation or material upon which the court may exercise its discretion to extend it. See decisions in the case of **Regional Manager Tanroads Kagera versus Rinaha Concrate Co. Ltd; Civil Application No. 96 of 2007 CAT, unreported and Godwin Ndeweri and Karoli Ishengoma versus Tanzania Indil Corporation (1995) TLR 200 and Republic versus Yona Kaponda and 9 others (1985) TLR 84.**

In the instant application, the applicant through his averment in paragraph 2 and 3 of the affidavit has advanced the reason for the delay being that, failure to lodge an appeal in time was out of his control due to the delay of the copy of judgment from the trial court at Nkasi District Court after the prison authority retrieved the same from the court, therefore the appeal out of time has become due to human imperfectness and was out of his control.

On her part, Mr. Fadhili Mwandeloma had no objection to the application by the applicant as he informed the court that the applicant has advanced sufficient reasons for the application which entitled him to be granted the prayer.

As well this application by the applicant is also supported by the supplementary affidavit of the Officer Incharge of Mollo Prison-Sumbawanga, who supports what was stated by the applicant in his affidavit as to be true.

With that view, I find that the applicant has advanced good cause for the failure to appeal within prescribed period of time. For that reason, I allow the application. The applicant is given a period of ten (10) days from today within which to file the notice of intention to appeal as well forty five (45) days within which to file petition of appeal to this court.

It is so ordered.




D. E. MRANGO

JUDGE

19.11.2020

Date - 19.11.2020
Coram - Hon. D.E. Mrango – J.
Applicant - Present in person
Respondent - Mr. Fadhili Mwandoloma – State Attorney
B/C - Mr. A.K. Sichilima – SRMA

COURT: Ruling delivered today the 19th day of November, 2020

in presence of the Applicant in person and Mr. Fadhili
Mwandoloma - Learned State Attorney for the
Respondent/Republic

Right of appeal explained.




D.E. MRANGO

JUDGE

19.11.2020