

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**AT MBEYA**

**MISC. CRIMINAL APPLICATION NO. 104 OF 2020**

***(Originating from the District Court of Chunya District, at Chunya  
in Criminal Case No. 106 of 2019)***

**JOHN MSHAMA SANYIWA.....APPLICANT**

**VERSUS**

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

**RULING**

**24. 11 & 07. 12. 2020.**

**Utamwa, J.**

This is an application for extension of time to file notice of intention to appeal and to appeal out of time by JOHN MSHAMA SANYIWA (the applicant). The application was made under of section 361 (2) of the Criminal Procedure Act Cap. 20 RE 2002, (Now R.E 2019) hereinafter referred to as the CPA.

The application was supported by an affidavit of the applicant. Essentially, the affidavit deposed that, the applicant is a prisoner at Ruanda prison, he had previously lodged his notice of intention to appeal and the appeal, but the same was struck out for being filed out of time. He further deposed that, he delayed to be provided with the lower court record (i.e the District Court of Chunya District, at Chunya) and he was transferred from Ruanda prison to Songwe prison where he got difficulties to receive the lower court record. Again, the process of appealing depended on the prison authority. The prison authority is thus, to blame

for his delay. He thus, prayed for this court to grant the application. The respondent objected the application through a counter affidavit sworn by Ms. Sara Anesius, learned State Attorney for the respondent/Republic.

When the application came for hearing, the applicant appeared in person and unrepresented. Mr. Shindai Michael, learned State Attorney appeared for the respondent/Republic. The applicant had nothing to add to what was contained in his affidavit.

On his part, the learned State Attorney for the respondent argued that, the application lacks merit because the applicant did not attach evidence to support the contention that, his appeal was struck out by this court. He also submitted that, blaming the prison authority for delay would not assist the applicant since he could give the notice of intention to appeal orally as the law allows that course. The learned State Attorney for the respondent further argued that, the applicant was supposed to attach the affidavit by the prison officer to substantiate his claim that, he was transferred from Ruanda Prison to Songwe prison. To support his argument, he cited the decision of the Court of Appeal of Tanzania (CAT) in the case of **Mela Sango v. Republic, Criminal Appeal No. 6 of 2015, CAT at Mbeya** (unreported).

Moreover, he contended that, the applicant's claim that, he delayed to receive the lower court record is worthless since he did not adduce any evidence showing that he made a follow up. He thus, urged for this court to dismiss the application for lack of merits. The applicant had nothing to rejoin.


I have considered the applicant's affidavit, the submissions by the learned State Attorney for the respondent, the record and the law. The law is clear that, leave for extension of time is granted at the court's discretion, but the discretion of the court should be exercised judiciously, i. e with reasons. A party seeking the court to exercise its judicial discretion to grant extension of time must thus, show good cause for failing to do what he was supposed to do within the prescribed time; See **William Kasian Nchimbi and 3 Others V. Abas Mfaume Sekapala and 2 Others, Civil Reference No. 2 of 2015, CAT at Dare es Salaam** (Unreported).

The issue before me is thus, whether the applicant in the matter at hand has adduced any good cause for this court to grant the application.

The applicant's grounds for delay are in his affidavit as narrated above. In my concerted opinion, those are sufficient grounds for this court to extend time. I say so due to the following two reasons: regarding the contention that, the applicant had previously appealed to this court, but his appeal was struck out, this court made an inquiry and noted that; indeed the applicant had appealed to this court through Criminal Appeal No. 26 of 2020, (hereinafter referred to as the previous appeal). The previous appeal was dismissed for being time barred on 30/5/2020 by Hon. Dr. A.J. Mambi, J: The applicant then lodged this application on 25/8/2020. Following the circumstances of this matter, especially considering the fact that, the applicant is a prisoner, I take it that he took an immediate step to make sure that he promptly pursues his appeal by preferring this application.

The principle of technical delay, indeed, also favours the applicant. The principle essentially guides that, the delay in taking the action within the time specified by law caused by time spent in prosecuting an incompetent matter in court constitute a good cause for the delay; see the decision by the CAT in the case of **Salvand K.A. Rwegasira v. China Henan International Group Co. Ltd, Civil Reference No. 18 of 2006** as cited in a recent case of **Elly Peter Sanya v. Ester Nelson, Civil Appeal No. 151 of 2018 CAT at Mbeya**, (Judgment dated at 27/3/2020 unreported). In the matter at hand, the applicant was delayed by prosecuting the previous appeal which ended by being dismissed for being bared by time limitation.

Owing to the reasons shown hereinabove, I answer the above issue affirmatively. The application is hereby granted. The applicant shall thus, file the notice of appeal within ten days and the appeal within forty five days from the date hereof. It is so ordered.

  
JHK.UTAMWA  
JUDGE  
07/12/2020

07/12/2020.

CORAM; J. H. K. Utamwa, Judge.

Applicant: present (by virtual court link while in Ruanda Prison).

Respondent: Ms. Sarah Anesius, learned State Attorney.

BC; Ms. Gaudensia, RMA.

Court: Ruling delivered in the presence of the applicant (by virtual court link while in Ruanda Prison-Mbeya) and Ms. Sarah Anesius, learned State Attorney for the respondent, in court this 7<sup>th</sup> December, 2020.



J. H. K. UTAMWA

JUDGE

07/12/2020.