

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY)

AT MWANZA

MISC. CRIMINAL APPLICATION NO.59 OF 2020

(Arising from the Judgment of Nyamagana District Court in Criminal Appeal No. 13 of 2020, Originating from Mwanza Urban Primary Court Criminal Case No. 445 of 2020)

HAMIS SWAIBU APPLICANT

VERSUS

NOTI ISSA RESPONDENT

RULING

Date of last Order: 17.02.2021

Date of Ruling: 17.02.2021

A.Z.MGEYEKWA,J

The applicant has lodged an application for extension of time to file a Notice of Appeal, the application is made under section 316 (2) of the Criminal Procedure Act, Cap. 20 [R.E 2019]

At the hearing, the applicant appeared in person, unrepresented whereas, the respondent did not appear even after been duly served to appear. Therefore, the court proceeded *ex parte* against the respondent.

In support of his application, the applicant had not much to say, he prayed for this court to grant his application for extension of time to file a Notice of Appeal before this court. He went on to submit that the Judgment was delivered on 30th October, 2020 and he filed this application on 27th November, 2020. He added that he was not able to file a Notice of Appeal because he was in Bukoba attending a burial ceremony of his late father.

In conclusion, the applicant urged this court to grant his application because he has overwhelming chances of success, he believes that he was wrongly accused.

I have given careful consideration to the arguments for the application herein advanced by the applicant. The central issue for consideration and determination is whether sufficient reasons have been advanced by the applicant to warrant the extension of time to file a Notice of Appeal before this court.

Before the court can exercise its unfettered discretion to extend time in favour of an applicant, the applicant is required to satisfy the Court, *inter alia*, that there is merit in the appeal, the extension of time will not cause undue prejudice to the respondent and the delay has not been inordinate. In the case of **Benedict Mumelo v Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held that:-

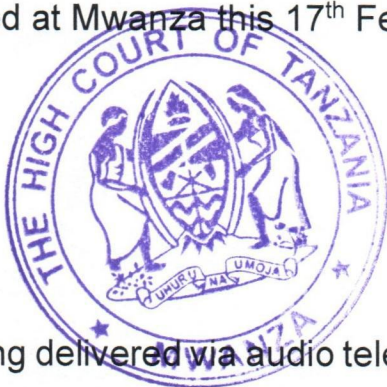
"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time

may only be granted where it has been sufficiently established that the delay was with sufficient cause."

Upon perusal of the court records, I have found that the applicant has appended two bus tickets from Mwanza to Bukoba dated 3rd November, 2020 three days after the delivery of the Judgment. The applicant returned to Mwanza on 24th November, 2020, and lodged this application on 27th November, 2020. To support his submission he attached the bust tickets (Annexure AI). I am satisfied that the applicant has stated good reasons for his delay to file the Notice of Appeal and in the interest of justice, I proceed to grant the application. The Applicant has to file his Notice of Appeal within 14 days from the date of this Ruling, weekdays are excluded.

Order accordingly.

Dated at Mwanza this 17th February, 2021.




A.Z.MGEYEKWA

JUDGE

17.02.2021

Ruling delivered via audio teleconference and the applicant was remotely present.


A.Z.MGEYEKWA

JUDGE

17.02.2021