

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

AT MBEYA

MISC. CRIMINAL APPLICATION NO. 105 OF 2020

*(Originating from the District Court of Mbozi District, at Vwawa in Criminal
Case No. 67 of 2018)*

COSMAS S/O JOHN SINYINZA.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

22. 02 & 15. 03. 2021.

Utamwa, J.

This is an application for extension of time to file a notice of intention to appeal and an actual appeal out of time. It was filed by COSMAS S/O JOHN SINYINZA (the applicant). He intends to appeal against the judgment of the District Court of Mbozi District, at Vwawa (the trial court) in Criminal Case No. 67 of 2018. The application was made under section 361 (2) of the Criminal Procedure Act, Cap. 20 R.E 2002, (Now R.E 2019) hereinafter referred to as the CPA.

The application was supported by an affidavit of the applicant. The affidavit essentially deposed that, the applicant was convicted and sentenced on 13/12/2018. He is now a prisoner at Ruanda prison in Mbeya. He had previously lodged his notice of intention to appeal and the appeal, but the same was dismissed for being out of time. He delayed to appeal because the copies of judgment and proceedings of the trial court were supplied to him on 12/03/2019, when it was already late. Again, the process of appealing depended on the prison authority. The delay was thus, not intentional. It was rather contributed by the trial court. 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. It essentially deposed that, the application lacked merits since the applicant did not give any supporting document to substantiate his contention that he was supplied with the record of the trial court belatedly. The counter affidavit also deposed that, the applicant's blameworthiness to the prison authority had no proof. He did not also account for each day of delay as required by the law.

When the application came for hearing, the applicant was unrepresented. Ms. Hannarose Kasambala, learned State Attorney appeared for the respondent/Republic. The applicant had nothing to add to what was deposed in his affidavit. On her part, the learned State Attorney for the respondent adopted the counter affidavit. She further argued that, the application lacks merit because, the applicant did not attach evidence to support the contention that his appeal was dismissed by this court. She

also submitted that, the applicant was supposed to attach an affidavit by the prison officer to substantiate his claim that, the prison authority delayed him. He also failed to account for each day of delay, which said delay was for more than a year. She thus, urged this court to dismiss the application for lack of merits. The applicant had nothing to rejoin.

I have considered the applicant's affidavit, the counter affidavit, the submissions by the learned State Attorney for the respondent, the record and the law. The law is clear that, an extension of time is granted at the court's discretion. The discretion should however, be exercised judiciously, i. e with reasons. A party seeking the court to exercise its judicial discretion to grant the prayed extension of time must show good cause/sufficient reasons for the failure to do what he was supposed to do within the time prescribed by the law; see the decision by the Court of Appeal of Tanzania (CAT) in the case of **William Kasian Nchimbi and 3 Others V. Abas Mfaume Sekapala and 2 Others, Civil Reference No. 2 of 2015, CAT at Dar 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.* In my concerted opinion, the circumstances of this matter speak for the applicant. This is due to the following two reasons: Firstly, the applicant had previously appealed to this court, but his appeal was dismissed. This court made an inquiry from its registry and noted that; indeed the applicant had appealed to this court through Criminal Appeal No. 27 of 2019, (hereinafter referred to as the previous appeal). The said previous

appeal was dismissed for being time barred on 26/06/2020 (by Mambi, J). The applicant then lodged this application on 27/8/2020.

Besides, the record shows that, the application (Chamber summons and the supporting affidavit) were signed by the applicant on 06/07/2020. This means that, the applicant, managed to prepare this application within only ten days following the dismissal of the previous appeal. He thus complied with the advice given by this court (Mambi, J.) on 26/6/ 2020 when it dismissed his appeal. Considering the circumstances of this matter 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.

Another reason in favour of the applicant is related to the principle of technical delay which applies to both civil and criminal proceedings. The principle essentially guides that, the delay in taking the action within the time specified by law caused by prosecuting another matter in court, though that other matter may be incompetent, constitutes a good cause for the delay; see the decisions by the CAT in the cases of **Salvand K.A. Rwegasira v. China Henan International Group Co. Ltd, Civil Reference No. 18 of 2006** (unreported) and **Elly Peter Sanya v. Ester Nelson, Civil Appeal No. 151 of 2018 CAT at Mbeya**, (unreported judgment dated at 27/3/2020). In the matter at hand, the applicant was delayed by prosecuting the previous appeal which ended by being dismissed for being bared by time. The principle of technical delay thus, saves him.

Owing to the reasons shown herein above, 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 actual appeal within forty five days from the date hereof. It is so ordered.



JHK UTAMWA

JUDGE

15/03/2021

Court: Ruling delivered in the presence of the applicant (by Virtual Court link while in Ruanda Prison- Mbeya) and Ms. Mwajabu Tengeneza, learned State Attorney for the respondent, in court, this 15th March, 2021.

JHK UTAMWA

JUDGE

15/03/2021