

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. CRIMINAL APPLICATION NO. 143 OF 2020

*(From the Court of Resident Magistrate of Mbeya, at Mbeya, in Criminal Case
No. 88 of 2018).*

YOHANA JASSON.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

22. 2 & 15. 3. 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 YOHANA JASSON (the applicant). He intends to appeal against the judgment of the Court of Resident Magistrate of Mbeya, at Mbeya (the trial court), in Criminal Case No. 88 of 2018. The application was made under 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. The affidavit essentially deposed that, the applicant is currently a prisoner at Ruanda prison in Mbeya. He previously gave his notice of intention to appeal in time. However, he was supplied with the copies of the judgment and proceedings of the trial court belatedly. In that case, he applied for extension of time (through the previous application) to this court and the same was granted. He was given 10 days for giving his notice of appeal and 45 days to file his appeal. Nevertheless, he neither gave the notice nor filed the appeal. This was because, the copies of the judgment and proceedings which he accompanied with the previous application were not returned to him by this court for the purpose of complying with its order.

The affidavit further deposed that, since the applicant is a prisoner, he depends on the prison authority in requesting the copies and in filing the documents to the court. He thus, prayed for this court to grant the application at hand since the delay was caused by this court for its failure to supply him with the required copies promptly.

The respondent/Republic, objected the application by filing a counter affidavit sworn by Ms. Rosemary Mgeni, learned State Attorney for the respondent. The counter affidavit deposed that, the contention by the applicant that he was previously granted extension of time by this court was supposed to be proved by documents. It also stated that, the applicant did not adduce sufficient reasons for this court to grant the application. The application thus, deserves to be dismissed.

When the application came up for hearing, the applicant appeared in person whereas Ms. Prosista Paul, learned State Attorney appeared for the respondent/Republic. The applicant had nothing to add to the reasons advanced in his affidavit. On her side, the learned State Attorney for the respondent adopted the counter affidavit. She further submitted that, since the applicant had previously applied for extension of time, and the same was granted, the delay which led to the present application was not supported with sufficient reasons. She also argued that, the applicant failed to indicate in his affidavit, if he had applied for the copies of judgment and proceedings from this court where he had attached them with the previous application. Additionally, she contented that, the applicant did not disclose the date when he was supplied with the copies after the grant of the previous application. She thus, urged this court to dismiss the application for lack of sufficient grounds.

In his brief rejoinder submissions, the applicant insisted that he wrote a letter to this court for the copies at issue.

I have considered the applicant's affidavit, the counter affidavit, the submissions by the parties, the record and the law. Our law is clear that, an extension of time is granted by the court discretionally. The discretion of the court should, however, 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/sufficient reasons for the failure to do what he was supposed to do within the time prescribed by the law; see **William Kasian Nchimbi and 3 Others v. Abas Mfaume Sekapala**

and 2 Others, Civil Reference No. 2 of 2015 Court of Appeal of Tanzania, at Dare es Salaam. (Unreported Ruling dated 5/3/2019).

The issue for determination in the matter at hand is therefore, *whether or not the applicant adduced sufficient reasons for this court to re-grant the extension of time.* In fact, I do not think if the grounds for delay adduced by the applicant are sufficient. This is due to the following reasons: the applicant did not disclose the date when the previous application was granted. He did not also attach any copy of the order granting that application. However, this court made an inquiry from its registry and found that, the order was made on 20/05/2020. It was based on the reasons *inter alia* that, the applicant's appeal had been struck out for being incompetent. The present application nonetheless, was filed in court on 01/10/2020. The chamber summons and the supporting affidavit show that, they were signed by the applicant on 25/09/2020. By simple arithmetic therefore, the present application was filed after the expiry of four months plus. Under these circumstances, the applicant was supposed to account for each day of the delay to file the application at hand. He would have also disclosed the dates when he applied for the copies of judgment and proceedings from this court and he obtained them, after the grant of the previous application.

In addition, it is clear that, in the previous application, the applicant was given ten days to give his notice of intention to appeal. The law does not require the notice to be accompanied with any copy of judgment or proceedings. This means that, even if it is presumed (without deciding) that, this court had delayed to return the copies to the applicant, he could

have given the notice timely and wait for the copies so as to file the actual appeal later. Nevertheless, he did not do so.

Owing to the above reasons, it is my view that, the applicant was negligent in pursuing his right of appeal upon the previous application being granted. The fact that he is a prisoner cannot absolve his negligence under the circumstances of the case. I therefore, answer the issue posed above negatively, that, the applicant did not adduce any sufficient ground for this court to grant the prayed extension of time. I consequently dismiss the application for demerits. It is so ordered.



JHK UTAMWA

JUDGE

15/11/2020

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.

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke.

JHK UTAMWA

JUDGE

15/03/2021