

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MBEYA)

AT MBEYA

CRIMINAL APPLICATION NO. 162 OF 2020

*(From the decision of the District Court of Mbozi at Vwawa Criminal Case
No. 87 of 2019)*

REMMY RASHID MARANDU.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Hearing : 15/03/2021

Date of Judgement: 23/03/2021

MONGELLA, J.

The applicant has filed this application under section 361 (2) of the Criminal Procedure Act, Cap 20 R.E. 2002. He is seeking to be granted extension of time within which to lodge notice of appeal and appeal out of time. The application is supported by the applicant's affidavit.

During the hearing, the applicant appeared in person and he prayed for his application to be granted on the sole reason that there was delay in issuing him with copies of judgment and proceedings.

On the other hand, the respondent was represented by Ms. Zena James, learned State Attorney. Ms. James opposed the application on the



ground that the reason advanced is not sufficient. She argued that the applicant first of all delayed in filing the notice of appeal which is required to be filed within 10 days from the date of pronouncement of the trial court decision. In consideration of the provision of the law, she argued that the filing of the notice of appeal does not require accompaniment of the copies of judgment and proceedings. Thus the reason advanced is not sufficient.

Referring to the record of the case, she further contended that the applicant received the copies of judgment and proceedings on 05th June 2020, but filed this application on 22nd October 2020 which was four months later. She was of the stance that since the applicant has also not accounted for this further delay after obtaining the copies of judgment and proceedings he cannot be said to have advanced sufficient reasons as required under the law.

Ms. James also disputed the contents of paragraph 3 of the applicant's affidavit whereby he claims to have initially filed an appeal and the same was struck out. On this, she made a simple reply to the effect that the allegation has not been proved as no ruling was attached by the applicant. In consideration of her arguments, she prayed for the application to be dismissed.

I have considered the contents of the applicant's affidavit and the submission of Ms. James. Going through the chamber summons and the supporting affidavit, it is clear that the applicant seeks to be granted

extension of time to appeal against the conviction and sentence rendered in Criminal Case No. 87 of 2019.

However, the trial court record, particularly at page 19 of the typed proceedings, indicates that Criminal Case No. 87 of 2019 of which the applicant seeks to impugn was not prosecuted to finality. The proceedings show that on 02nd March 2020, the prosecution side prayed to withdraw the case under section 98 (a) of Cap 20 R.E. 2002. The prayer was granted by the trial court and the applicant, together with other two co-accused persons, was discharged. As such there was no conviction or sentence to be appealed against.

In the premises, it is obvious that the applicant must have intended to appeal against another decision and not Criminal Case No. 87 of 2019. This application therefore becomes untenable in this court. It is consequently struck out.

Dated at Mbeya on this 23rd day of March 2021


L. M. MONGELLA

JUDGE

Court: Ruling delivered at Mbeya through video conference on this 23rd day of March 2021 in the presence of the applicant, and Ms. Xaveria Makombe, learned State Attorney for the respondent.


L. M. MONGELLA

JUDGE



