

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA

MISCELLANEOUS CRIMINAL APPLICATION NO 52 OF 2020

(Originating from Economic Case No 86 of 2018 OF THE District Court of Tarime at Tarime)

MWITA SIMON MARWA.....APPLLCANT

Versus

THE REPUBLIC RESPONDENT.

RULING

12 Feb & 23th March, 2021

Kahyoza, J.

Mwita Simon Marwa, the applicant seeks the indulgence of this court to enlarge time within which to lodge a notice of appeal and to appeal out of time. The application is made under the provisions of section 361 (2) of the **Criminal Procedure Act**, Cap. 20 [R.E 2019] and supported by the applicant affidavit.

The applicant ascribed the delay to the inaction of the prison authorities. The applicant deposed that immediately after his conviction, he prepared a notice of appeal on time and forwarded to prison authority so as to file to the High Court but his appeal was struck out for being out of time.

The issue is whether the applicant adduced good or sufficient cause for this court to extend time to file notice appeal and appeal out of time.

The applicant appeared in person, while Mr. Isahaka Ibrahim while learned State Attorney appeared for appeared on behalf of the respondent, Republic. The Respondent did not file a counter affidavit to oppose the application. He vehemently resisted the application contending that the applicant was not diligent on the reason that the Court struck out the appeal on the 01/10/2020 and the applicant delayed to institute the current application until after 30 days lapsed. He added that the applicant has not accounted for the all days of his delay. He prayed the application to be dismiss for want of merits.

I will revert to the above argument shortly but in the meantime, let me, firstly, narrate a brief background with a view to provide a clear understanding of the present application. The Applicant **Mwita Simon Marwa** was arraigned before the District Court of Tarime with the charge of unlawful possession of Government Trophies, contrary to 86 (1) and (2) (c)(iii) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 of the First Schedule to the Economic and Organized Crime Control Act [Cap. 200, P.E 2002], convicted and sentenced to twenty-two years in prison. He was sentenced on the 20th of June 2019. He collected a copy of the judgment on 25th February, 2020 and filed to this Court on 3rd of June, 2020. This Court struck out the appeal for being time barred on 7th October, 2020. The applicant then filed the current application on the 11th November 2020, that is after one month and four days from the date the Court struck out the appeal.

It is settled position that a person applying for extension of time must adduce good cause for the Court to exercise its discretion and grant extension of time see the case of **Lyamuya Construction**

Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported), the Court reiterated the following guidelines for the grant of extension of time: -

"(a) The applicant must account for all the period of delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.

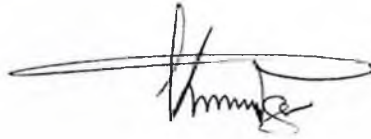
(d) If the court feels that there other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."

The respondent did not file a counter affidavit. The learned state attorney opposed the application orally. It is a settled position of the law that failure to file a counter affidavit leaves the factual issues not opposed. The respondent, therefore, did not oppose the applicant's averment that he prepared his application on time and the prison authorities delayed to submit it to this Court. I find that ground to be a good cause for the applicant's delay. The applicant is in prison he cannot access this Court except through the prison's officers. The court of appeal on the case of **Renatus Mahanje V s Republic**, Criminal Appeal No 417 of 217 stated that;-

"With respect, the Court has occasionally treated with extreme care applications for enlargement of time within which to lodge notices of intention to appeal from inmates"

In the upshot, I allow the application and grant the applicant 10 days and 45 days to lodge a notice of appeal and the appeal respectively, from the date this ruling.

I order.

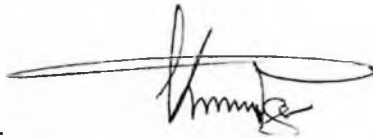


J. R. Kahyoza, J

23/03/2021

Court: Ruling delivered in the absence of the parties this 23rd day of

March, 2021



J. R. Kahyoza, J

23/03/2021

