

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 74 OF 2020

(Original, Criminal Case No. 106 of 2019 at Babati District Court)

DODO TEKWAY.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

24/02/2021 & 24/02/2021

GWAE, J

Before this court, is an application for extension of time preferred by the applicant under section 14 (1) of the Law of Limitation Act Cap 89 R.E 2002. The applicant named above is seeking for an order to extend time to enable him to file an appeal out of time and the same is supported by his sworn affidavit.

For better appreciation of this application, I find it apposite to explore the factual setting giving rise to the application which are best captured in the applicant's affidavit as follows;

Before the District Court of Babati, the applicant was charged with and convicted of an offence of malicious damage to property c/s 326 (1) of the Penal

Code (Cap 16 R.E 2002) and was sentenced to the term of a six months conditional discharge together with a compensation of Tshs. 2,500,000/=.

Unsatisfied with an order of compensation, the applicant filed his appeal before this court, however, on 26/11/2020 the appeal was withdrawn on the reason that the applicant had filed an appeal against a wrong party. Thus, this application.

When the matter came for hearing before me, the applicant appeared in person unrepresented while the respondent was represented by the learned State Attorney **Mr. Khatibu** who did not object the application.

As stated above, the applicant in the instant case filed his first appeal before this court within time, however on the reason of "human error" as deponed by the applicant in his affidavit he filed his appeal against a wrong party by the name of EUSTAKI GOLLIATI, the victim in the criminal case instead of "The Republic". Due to this error a preliminary objection was raised where the applicant conceded to it and prayed for the withdrawal of the appeal which was consequently marked withdrawn. The applicant is now before this court seeking for extension of time to file another appeal.

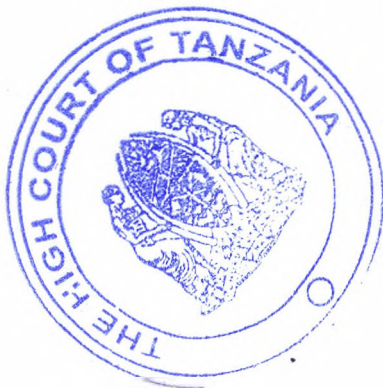
In the case of **Fortunatus Masha vs. William Shija & another** [1997] TLR 154 the Court of Appeal of Tanzania termed the time spent by the applicant in pursuing an incompetent application as technical delay rather than actual delay

and the same cannot be used to determine the timeousness or penalize the applicant in filling a fresh appeal. Part of that holding is hereby reproduced;

".....I am satisfied that a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted. In the circumstances, the negligence if any refers to the filing of an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having been duly penalized by striking it out, the same cannot be used to determine the timeousness of applying for filing the fresh appeal."

Following the position of the law above, I find and hold that the applicant has explained away the delay in filling a fresh appeal to this court. Accordingly, this application is hereby granted. The applicant shall file his appeal within ten (10) days from the pronouncement of this ruling.

It so ordered.




M. R. GWAE
JUDGE
24/02/2021