

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MBEYA DISTRICT REGISTRY**

**AT MBEYA**

**MISC. CRIMINAL APPLICATION NO. 151 OF 2020**

*(From the Court of Resident Magistrate of Mbeya, at Mbeya, in  
Criminal Case No. 42 of 2019).*

**MGALA s/o PETER.....APPLICANT**

**VERSUS**

**THE DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT**

**RULING**

**02. 03 & 20. 04. 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 **MGALA s/o PETER** (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. 42 of 2019. 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 deponed that, the applicant is currently a prisoner at Ruanda prison in Mbeya. He previously gave his notice of intention to appeal as per the legal requirement as soon as he was put in prison to serve his sentence following a conviction against him. However, the

affidavit further states that, the applicant's delay to file the notice in time was not due to his own fault. It was caused by the delay of the trial court in supplying him with its copies of judgment and proceedings. The notice he had filed was thus, omitted from the record of the appeal he had filed. The omission resulted to the striking out of his appeal. He was thus, advised to file another notice of appeal, hence this application. He thus, urged this court through the affidavit to grant him extension of time to file the notice of appeal.

The respondent/Republic, objected the application by filing a counter affidavit sworn by Mr. Habel Kihaka, learned State Attorney. The counter affidavit deponed that, the contents of the applicant's affidavit were not true since he did not attach a copy of any document to prove his averments. There was thus, no sufficient reasons for granting the application, hence the same is liable to be dismissed.

When the application came up for hearing, the applicant appeared without any legal representation. The hearing was conducted through a virtual court link. Ms. Zena James, 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, the affidavit of the applicant did not also indicate the name of the Judge of this court who struck out the allegedly filed appeal. In his brief rejoinder submissions, the applicant insisted that he attached the copy of the pertinent order of this court to the affidavit.

I have considered the applicant's affidavit, the counter affidavit, the submissions by the parties, the record and the law. Our law is clear and trite that, an extension of time is granted by the court discretionally. The discretion 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 the guidance 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 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 grant the extension of time.* In fact, I do not think if the grounds for the delay adduced by the applicant are so sufficient. This is due to the following reasons: in the first place, I find serious contradictions in the affidavit of the applicant. On one hand, he stated that he filed the notice of appeal as required by law when he was put in prison. This meant that he filed it timely. However, on the other hand, he stated that he delayed to file the same notice since the trial court delayed to supply him with the copies of the judgment and proceedings (henceforth the copies). This contradiction clearly implies existence of falsehood in his affidavit.

Actually, even if it is presumed (without deciding) that the applicant had filed the notice timely as he stated in the affidavit, this particular fact alone would not be of any help to the applicant. This is because, the applicant did not disclose in the affidavit the dates for his conviction and for giving the notice. This court could not thus, judge if he in fact, had given the notice timely and according to the law which requires the notice to be given within ten days from the date of the conviction; see section 361(1)(a) of the CPA.

Again, the applicant tried to throw the blameworthiness to the trial court for its alleged delay to supply him with the copies. Nonetheless, he did not depone in his affidavit that he had actually applied for the copies from the trial court. He did not also disclose the date when he applied for the same and when he received them. He has thus, deprived this court of a better position to determine the truthfulness of the fact that the trial court was the cause of his delay.

Furthermore, the court does not believe that the applicant in fact, needed the copies before he could give the notice. This is so because, it is not a legal requirement that the notice should be accompanied by any such copies. Again, giving the notice of intention to appeal does not require any prior supply of the copies.

Besides, the applicant did not disclose any date when his allegedly previous appeal was struck out. He did not also attach any order of this court striking out the appeal. His argument in the brief rejoinder submissions that he attached the order to his affidavit is not supported by the record of this matter. I thus, agree with the learned State Attorney for the respondent that, this omission amounted to a skipping of the material facts which said omission negates the sufficiency of the reasons supporting the application. It is more so because, under such circumstances, this court is deprived of the opportunity to consider if the useful principle of technical delay operates in favour of the applicant.

The principle of technical delay just mentioned above essentially guides that, the delay in taking a given action within the time prescribed by the law caused by prosecuting another matter in court, though that other matter may be incompetent, constitutes a good cause for the delay if that said matter is struck out and the subsequent application for extension of time is promptly made by the applicant, being the affected party; 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).

Owing to the above reasons, I 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 as rightly argued by the learned State Attorney for the respondent. I consequently dismiss the application for lack of merits. It is so ordered.



  
JHK UTAMWA  
JUDGE  
20/04/2021

Date; 20/04/2021.

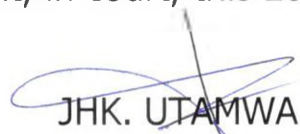
CORAM; Hon. JHK. Utamwa, J.

Applicant; present (by virtual court link while in Ruanda Prison-Mbeya).

For Respondent; Mr. Davis Msanga, State Attorney, present personally.

BC; M/s. Gaudencia, RMA.

**Court:** Ruling delivered in the presence of the applicant (by virtual court while in Ruanda Prison-Mbeya) and Mr. Davis Msanga, learned State Attorney for the Respondent, in court, this 20<sup>th</sup> April, 2021.

  
JHK. UTAMWA  
JUDGE  
20/04/2021.