

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**CRIMINAL APPLICATION No. 6 OF 2020**

*(C/F Criminal Case No. 49 of 2019 District Court of Mwanga at Mwanga)*

**NURDIN JAMES @ KABOGO ..... APPLICANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

***21<sup>st</sup> December 2020 & 10<sup>th</sup> May 2021***

**RULING**

**MKAPA, J:**

This is an application for extension of time within which to lodge an appeal out time against the decision of the District Court of Mwanga at Mwanga (trial court) in **Criminal Case No. 49 of 2019**. The application is by way of Chamber Summons supported by applicant's sworn affidavit. It is made under **Rule 10 of the Appellate Jurisdiction Act**, Cap 41 R.E 2002 (AJA) and **section 361 (1) (c) and (2) of the Criminal Procedure Act**, Cap 20 R.E 2019 (CPA).

At the hearing of the Application the respondent appeared in person unrepresented while Ms. Lilian Kowero, learned State Attorney represent the respondent Republic.



From the information of the applicant's affidavit the applicant averred that, following his conviction and subsequent thirty (30) years imprisonment sentence on 28<sup>th</sup> February, 2020, the following day he timely filed his Notice of intention to appeal at the trial court. He explained further that although copies of judgment and proceedings appeared to have been endorsed on the 28<sup>th</sup> February 2020, it was not until the 8<sup>th</sup> January 2021 when he was supplied with the said documents through Karanga Central Prison authority. He further stated that, since the time limit for filing an appeal had already lapsed he prayed for this Court to grant the application since the delay was not occasioned by him.

In reply Ms Kowero did not object the application the reason being that the delay was as a result of the delay in obtaining copies of judgment and proceedings from the trial Court. She finally prayed for this Court to allow the application.

Prior to determining the merit or demerit of the instant application, I find it necessary to firstly consider whether this court has been properly moved to determine this application. It is well principle settled that, prior to determining any matter before it the Court has to satisfy itself whether it has been properly moved to determine such matter. This has been underscored in numerous Court of

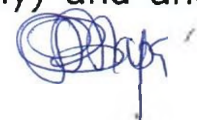


Appeal's decisions including the decisions in the case of **Abdulhamid Ramadhan Mjombo & 2 Others V Ali Salim Ali & 2 Others**, Civil Application No. 4 of 2004 (unreported), and **CITI Bank Tanzania Ltd V Tanzania Telecommunications Co. Ltd & 4 Others**, Civil Application No. 64 of 2003 (unreported).

I have noted at the outset that the applicant has wrongly cited one of the enabling provisions namely, **Rule 10** of AJA as if the application is filed before the Court of Appeal. Additionally, he has cited section 361 (2) of the CPA which provides that;

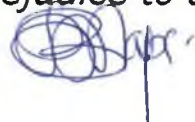
*(2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.*

In the spirit of the principle of Overriding Objective which urges courts to deal with cases justly, speedily while having regard to substantive justice without being overwhelmed by procedural technicalities, my view is, wrong citation of one of the enabling provision does not necessarily render the whole application incompetent since the above quoted provision is proper before the eyes of the law as was held in the case of **Alliance One Tobacco Tanzania Limited and Another V Mwajuma** Hamisi (as Administratrix of the Estate of Philemon R. Kleny) and another,



**Misc. Civil Application No. 803 of 2019**, at Dar-Es- Salaam (unreported). I am therefore inclined to give benefit of doubt to the applicant to the effect that this Court has been properly moved. I now turn to the merit of the application. The law is settled to the effect that, granting or refusal of extension of time is entirely court's discretion upon the applicant establishing sufficient cause depending on the circumstances of each case. Further that there are no hard or fast rules on what amounts to sufficient cause. However, there are laid down guidelines from decided cases which ought to be taken into consideration in establishing sufficient cause including whether or not the application has been brought promptly, length of the delay, degree of prejudice to the respondent and the legality of the decision intended to be challenged. The decision in the case of **Mbogo V. Shah** [1968] EA the defunct Court of Appeal for Eastern Africa is illustrative on the matter when the Court emphasized:-

*"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended."*

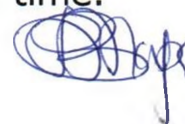


As per the applicant's submission the main cause of the delay in filing the application is due to the delay in obtaining copies of judgment and proceeding. It is worthy to note that section 19 of the Law of Limitation Act, Cap 89 R.E. 2019 provides that the time spent in obtaining copies of the judgment, decree, ruling, orders and proceedings shall stand excluded.

The above legal position is underscored in the landmark case of **Trustees of Marian Faith Healing Center @ Wanamaombi V. the Registered Trustees of the Catholic Church of Sumbawanga Diocese**, Civil Appeal No. 47 of 2007, the Court of Appeal of Tanzania at Dar-Es-Salaam, in which **Msoffe J.A** (*as he then was*) held that;

*"In computing time period of appeal, the time spent to obtain a copy of the Judgment should be excluded."*

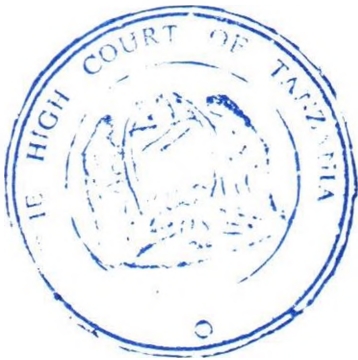
Taking note of the above authority and considering the main reason for the delay as averred by the applicant namely, delay in obtaining copies of judgment and decree from the trial Court, I have no hesitation in holding that the applicant has established sufficient reason to warrant this court extend time.





For the reasons discussed above, I allow the application and order the applicant to file the appeal within fourteen (14) days from the date of this Ruling.

Dated and Delivered at Moshi this 10<sup>th</sup> May, 2021.



  
**S.B. Mkapa**  
**JUDGE**  
**10/05/2021**