

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

MISC. CRIMINAL APPLICATION No. 8 OF 2021

*(Arising from the District Court of Misungwi at Misungwi in Criminal Case No.
52 of 2020)*

KWIZELA S/O FRANK APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of Last Order: 16.03.2021

Date of Ruling: 16.04.2021

A.Z. MGEYEKWA, J

The applicant has instituted an application which is brought under Section 361 (1) and (2) of the Criminal Procedure Act, Cap.20 [R.E 2019]. The order sought is for extension of time to lodge a Notice of Appeal out of time to appeal before this court. The application is supported by affidavit deposed by Kwizela Frank, the applicant.

The factual background giving rise to this application. In brief, the applicant and two others were arraigned before the District Court of Misungwi at Misungwi charged with theft. The particulars of the offence are that the accused persons were jointly and together on an unknown

date in April, 2020 at Kigongo Ferry Village within Misungiw District in Mwanza Region did steal 30 meters of copper wire valued at Tshs. 5,610,000/= the property of China Civil Engineering Construction Company which was under the supervision of one Onesphory Peter, the Company Human Resource Officer. The applicant was found guilty of theft contrary to section 265 of the Penal Code Cap. 16 and consequently, sentenced to a term of 5 years imprisonment.

Following the global outbreak of the Worldwide COVID - 19 pandemic (Corona virus), the hearing was conducted via audio teleconference, the applicant and Ms. Gisela Alex, learned State Attorney for the republic were remotely present.

The applicant urged this court to extend time to file a Notice of Appeal out of time. He submitted that the judgment was delivered in December, 2020 and was moved to Kigoma therefore, as a result, he delayed to receive a copy of a judgment and was not able to file a Notice of Appeal timely. The applicant urged this court to grant his application to file a Notice of Appeal out of time.

In reply, Ms. Gisela, learned State Attorney was briefly and straight to the point. She conceded with the applicant's application for the main reason that immediately after the deliverance of the judgment the applicant was transferred from Misungwi to Kibonde in Kigoma. She

added that the eight months delay is justifiable and the same amounts to good reason for his delay as per section 361 (1) and (2) of the Criminal Procedure Code Cap.20 [R.E 2019].

In his short rejoinder, the applicant beckoned upon this court to grant his application for extension of time to file the Notice of Appeal out of time.

I have given careful consideration to the arguments for the application herein advanced by the applicant and the respondent. The central issue for consideration and determination is whether sufficient reasons have been advanced by the applicant to warrant the extension of time to file a Notice of Appeal before this court. The court's power for extending time is both wide-ranging and discretionary but it is exercisable judiciously upon sufficient reasons being shown. It may not be possible to lay down an invariable or constant definition of the phrase 'sufficient reason' but the court consistently considers factors such as the delay were with sufficient cause, the degree of prejudice, if any, that each party stands to suffer depending on how the court exercise its discretion; the conduct of the parties, the need to balance the interest of a party who has a constitutionally underpinned right of appeal.

There are a plethora of legal authorities in this respect. As it was decided in numerous decisions of the Court of Appeal of Tanzania, in the case of **Benedict Mumello v Bank of Tanzania**, Civil Appeal No. 12 of

2002 (unreported), **Republic v Yona Kaponda and 9 others** [1985] TLR 84 and in the case **Blueline Enterprises Ltd v East African Development Bank** Misc. Civil Cause No. 135 of 1995 (unreported) the Court of Appeal of Tanzania decisively held that:-

"It is trite law that extension of time must be for sufficient cause and that the extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, upon sufficient cause being shown which has to be objectively assessed by the court."

Reading the applicant's affidavit, specifically paragraphs 2,3,4, and 5 the applicant is complaining that after he was convicted he was transferred from Misungwi to Kibonde where he is to date, therefore, he was not able to file the Notice of Appeal within time. I have considered the circumstances of the case, the fact that the requisite time of filing a notice of appeal expired while the applicant was transferred from Misungwi to Kibondo in Kigoma. I have also considered that the applicant has shown interest to pursue his appeal and trying to find justice. In the case of **Oswald Mwarabu Mawanzirubi v Tanzania Fish Processor Ltd** Civil Application No. 13 of 2010, the Court of Appeal of Tanzania held, that:-

"...What constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon the circumstances of each individual case. It is

upon the party seeking the extension of time to provide the relevant material to move the court to exercise its discretion".

Based on the above authorities, I am satisfied that the applicant has advanced sufficient reasons to warrant this court to grant his application. I have also considered the fact that the right of appeal is not only a statutory one but also a constitutional right, of which a person cannot be lightly denied when the higher court is there to determine the applicant's rights.

For the above reasons, I hereby exercise the court's discretion and extend the time for the applicant to file a notice of appeal.

Order accordingly.

DATED at Mwanza this 16th April, 2021.


A.Z. MGEYEKWA

JUDGE

16.04.2021

Ruling delivered on the 16th April, 2021 via audio teleconference whereby the applicant and Gisela Alex, learned State Attorney for the respondent were remotely present.


A.Z. MGEYEKWA

JUDGE

27.10.2020