

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. CRIMINAL APPLICATION NO. 169 OF 2020

(From the District Court of Momba District, at Chapwa, in Criminal Case No. 87 of 2018).

RAYMOND NASIBU MWAIPALU.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

12. 4 & 18. 5. 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 RAYMOND NASIBU MWAIPALU (the applicant). He intends to appeal against the judgment of the District Court of Momba District, at Chapwa, in Criminal Case No. 87 of 2018. 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 deposed that, the applicant was charged with and convicted of unnatural offence. He was sentenced to thirty years imprisonment. He prepared and signed a notice of intention to appeal in time. However, he handed it to the prison authority for lodging it in court. He also filed an appeal which was struck out for being filed out of time. The affidavit further stated that, the delay was unintentional, but was caused by the trial court for supplying him with its records belatedly. He is also a layman and prisoner. He thus, depends much on the prison authority to file documents in court on his behalf.

The respondent/Republic, objected the application by filing a counter affidavit sworn by Ms. Sarah Anesius, learned State Attorney. The counter affidavit deposed that, the applicant was supposed to attach a copy of the notice of intention to appeal to prove that he had actually prepared and signed in time. He was also supposed to attach the order that allegedly struck out the appeal. He did not however, discharge his duties. The applicant did not thus, adduce sufficient reasons for this court to grant the application. The same thus, deserves to be dismissed.

When the application came up for hearing, the applicant appeared in person whereas Ms. Rosemary Mgeni, 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 reiterated the contents of the counter affidavit. She thus, urged this court to dismiss the application for lack of sufficient grounds.

In his brief rejoinder submissions, the applicant prayed to produce the documents which he did not attach to the affidavit so as to meet the claims by the State Attorney for the respondent. However, for avoidance of taking the other side by surprise, the court rejected this prayer.

I have considered the applicant's affidavit, the counter affidavit, the submissions by the parties, the record and the law. Our law is clear that, leave for extension of time is granted at the discretion of the court. The discretion should however, be exercised judiciously, i. e with reasons. A party moving the court to exercise its judicial discretion to grant extension of time must firstly show good cause/sufficient reasons for failing to do what he was supposed to do within the time prescribed by the law; see the case of **William Kasian Nchimbi and 3 Others V. Abas Mfaume Sekapala and 2 Others, Civil Reference No. 2 of 2015 Court of Appeal of Tanzania, at Dare es Salaam** (Unreported).

The issue for determination in the matter a 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 reasons for delay adduced by the applicant are sufficient. This is because, it is the law that, reasons for granting an application of this nature are supposed to be stated in the affidavit supporting the application. Nevertheless, the applicant's affidavit did not support his statements by attaching the necessary documents. He did not also disclose the date when the previous notice of appeal was signed and handled to the prison authority. Furthermore, he

did not show as to when the previous appeal was struck out. The disclosure of date when the previous appeal was struck out would have assisted the court to determine the promptness of the applicant in filing this application. In law, such promptness constitutes a sufficient reason for extending the time. The omissions committed by the applicant were thus, fatal to the application at hand.

Owing to the above reasons, I answer the issue posed above negatively, that, the applicant did not adduce any sufficient reason for this court to grant the prayed extension of time. I consequently dismiss the application for demerits. It is so ordered.


JHK UTAMWA
JUDGE
18/05/2021

18/05/2021.

CORAM; JHK. Utamwa, J.

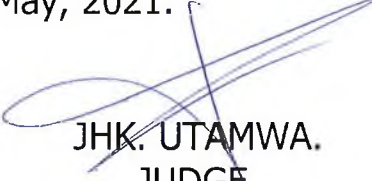
Applicant: present (by virtual court while in Ruanda prison, Mbeya).

Respondent: Mr. Davis Msanga, State Attorney.

BC; Ms. Patrick Nundwe, RMA.

Court: ruling delivered in the presence of the applicant (by virtual court link while in Ruanda Prison-Mbeya) and Mr. Davis Msanga, State Attorney for the respondent, this 18th May, 2021.




JHK. UTAMWA.
JUDGE.
18/05/2021.