

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 23 OF 2020

(C/F Economic Case No. 8 of 2017, in the District Court of Kiteto at Kihaya)

MAZENGO SELENJE LECHIPYA APPLICANT

VERSUS

THE D.P.P RESPONDENT

RULING

3/6/2021 & 11/6/2021

ROBERT, J:-

The Applicant, Mazengo Selenje Lechipya, came to this court seeking an order for extension of time to file both the notice and petition of appeal against the decision of Kiteto District court in Economic Case No. 8 of 2017. The Applicant moved the court by way of chamber summons filed under section 361(2) of the Criminal Procedure Act, Cap. 20 R.E. 2002 supported by the sworn affidavit of the Applicant.

At the hearing of this application on 3rd June, 2021, the Applicant appeared in person, unrepresented whereas the Respondent was represented by Mr. Ahmed Khatibu, learned State Attorney.

Having been invited to expound on his application, the Applicant submitted that, he was convicted on 13/5/2019 and on 14/5/2019 he prepared a notice of appeal and left it with the admission office at Kiteto District prison hoping it would be filed in court within the prescribed time. Later on, when he decided to file an appeal, he was asked about the notice of appeal which made him to realize that the notice of appeal was never filed in court. As a consequence, he preferred this application seeking extension of time to file both Notice and Petition of appeal out of time.

In reply, Mr. Hatibu supported the application based on the grounds stated in the Applicant's affidavit. He added that, the impugned judgment has some clerical errors as the trial Magistrate indicated the date of last orders to be 2018 instead of 2019 which makes the delay to appear inordinate.

As I pose to consider whether this application is meritorious, I am mindful of the obvious that, powers vested to the court to grant extension of time are discretionary but needs to be exercised judiciously which means, the court needs to consider if there are sufficient reasons or good cause for the delay before granting a prayer for extension of time. The


scale of whether or not the reasons for the delay amounts to a good cause or sufficient reason depends the circumstances of each case.

In the present application, the Applicant's affidavit and submissions, which are not opposed by the Respondent, indicates that the Applicant acted diligently in pursuing his right of appeal by presenting his notice of intention to appeal to the officer in charge at Kiteto District prison. As a prisoner, the Applicant was dependent on the admission office of Kiteto District Prison to facilitate the filing of his notice of appeal within the prescribed time. Unfortunately, that was not done and the one to pay the price is the Applicant. Under the circumstances, this Court finds the Applicant blameless in the alleged delay. Accordingly, I find no justification not to allow this application and grant the prayers sought by the Applicant.

Consequently, this application is allowed. Leave is granted for the Applicant to file his notice of intention to appeal within 14 days and appeal within 30 days from the date of this order.

It is so ordered.




K.N. ROBERT
JUDGE
4/6/2021