

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 40 OF 2020

(C/F Criminal Case No. 167 of 2018, District Court of Simanjiro at
Orkesumet, Before L.R Kasebele-SRM)

LOGOLIE SARUNIAPPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

6/5/2021 & 4/6/2021

ROBERT, J:-

Before this court, the Applicant **Logolie Saruni** Sought to extend time to lodge both the Notice and Petition of appeal against the decision of the District Court of Simanjiro at Orkesumet in Criminal Case No.167 of 2018. The application is filed under section 361 (2) of the Criminal procedure Act, Cap 20 R.E 2019 and supported by a sworn affidavit of Mr. Richard Evance Manyota, the learned Counsel for the Applicant.

At the hearing of this application the Applicant was represented by Mr. Richard Evance Manyota, learned counsel whereas the Respondent enjoyed the legal services of Mr. Ahmed Hatibu, State Attorney.

Highlighting on this application, Counsel for the Applicant submitted that, the Applicant having been sentenced to 30 years imprisonment by the District Court of Simanjiro instructed one Mr. Loomu Ojare, learned counsel (now a deceased) to represent him in his appeal while he was in custody. He was later transferred from Kisongo prison in Arusha to Karanga prison in Moshi which made it difficult to have direct contact with the advocate in order to follow up on the matter.

He maintained that, the Applicant's relatives who resides at Simanjiro district made a follow up on the issue by visiting the High Court at Arusha where after perusal of the court records, they realized that the learned counsel did not file the notice of appeal or appeal in respect of this matter. They were advised to visit the Legal and Human Rights Centre (LHRC) for legal aid and on 3/8/2020 this application was filed.

He implored the Court to be guided by the Court of Appeal decision in the case of **Felix Tumbo Kisima vs Tanzania Telecommunications Corporation Ltd** (1996) TLR No. 23 where the court held that advocate's

negligence can be a ground of appeal for an appellant who didn't participate in that negligence.

Submitting in response, counsel for the Republic had no objection to this application based on the grounds stated by the learned counsel for the Applicant and the fact that the Applicant was in prison throughout the period of filing the notice of appeal and the subsequent appeal.

Considering the reasons adduced by the learned counsel for Applicant, this court has noted that, to a large extent, the Applicant is not to blame for the alleged delay in filing the Notice and petition of appeal within the prescribed time. The said reasons, which are not objected by the Republic, serves to establish that the Applicant was in custody and failed to know if the requisite notice or petition of appeal were filed by his advocate, he was transferred from a prison in Arusha to Kilimanjaro region thereby losing direct contact with his advocate and the updates on the progress of his intended appeal and, it seems, his advocate died without filing the required notice or petition of appeal. Based on the stated reasons, this Court is satisfied that the Applicant has been able to show good cause warranting extension of time. As a consequence, I allow this application. The Applicant is given fourteen (14) days from the date of this ruling to lodge both notice and petition of appeal.

It is so ordered.




K.N. ROBERT
JUDGE
4/6/2021