

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
MISC. CRIMINAL APPLICATION NO. 37 OF 2021

*(Originating from the Resident Magistrate's Court of Mbeya at Mbeya,
Criminal Case No. 185 of 2018)*

1. NICOLOUS CHARLES SINKA
2. MUSA EDSON MSWIMA } **APPLICANTS**

VERSUS
THE REPUBLIC..... RESPONDENT

RULING

Date of Ruling: 21.06.2021

Dr. A. J. MAMBI, J.

This Ruling emanates from an application filed by the applicants for an extension of time to file an appeal out of time. The applicants in their application have prayed to this court to allow them to file appeal against the decision made by the trial Court. The application is supported by an affidavit where the applicants have stated his reasons for their delay.

During hearing the applicants appeared unrepresented while the Republic was represented by the learned State Attorney Ms. Prosista.

In their submission, the applicants briefly submitted that they have filed their application supported by an affidavit. They argued that they have sufficient reasons to do so. The applicants briefly submitted that they rely with their reasons under their affidavit. They argued that they delayed due to the prison procedures and failure to get a copy of proceedings and judgment in time.

In reply to the applicants application, the respondent, the learned State Attorney Ms. Prosista did not support this application on the ground that the applicants had not indicated sufficient reasons in their affidavit. She argued that the affidavit by the applicants does not disclose any reasons for their delay.

I have considerably perused the documents and considered the submissions made by the applicants to find out whether this application has merit or not. My findings will be based on determining the issue as to whether the applicants have advanced sufficient reasons for this court to consider their application for an extension of time to file an appeal out of time.

It is clear from the records that the applicants who are in the prisons have advanced sufficient reason for the delay as such delay was beyond their control. The position of the law and case studies are clear that where any party seeks for an extension of time to file an appeal out of time he is required to advance sufficient reasons in his affidavit before the court can

consider and allow such application. This position was clearly underscored by the Court of Appeal of Tanzania in **REGIONAL MANAGER, TANROADS KAGERE V. RUAHA CONCRETE COMPANY LTD CIVIL APPLICATION NO.96 OF 2007 (CAT unreported)**. The court in this case observed that;

“the test for determining an application for extension of time, is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted”.

This means that in determining an application for extension of time, the court has to consider if the applicant has established sufficient cause or good cause as to why the sought application is to be granted. In other words, the court need to take into account factors such as reasons for delay that where the applicant is expected to account of cause for delay of every day that passes beyond the aforesaid period, lengthy of the delay that is to shown such reasons were operated for all the period of delay.

In the application before this court, the applicants in their affidavit have clearly indicated that they had sufficient reasons for their delay and being at the prison also contributed in their delay.

I have perused the applicants, document including their affidavit in line with their submission and found that the applicants have indicated reasonable or sufficient cause to enable this court to consider and grant their application. Indeed, the question as to what it amounts to “sufficient

cause” was underscored in **REGIONAL MANAGER TANROADS KAGERA VS RUAHA CONCRETE CO LTD CIVIL APPLICATION NO 96 of 2007**, where the court observed the following:-

“What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules”(emphasis supplied).

Similarly, The Court in **TANGA CEMENT AND ANOTHER CIVIL APPLICATION NO 6 OF 2001** clearly held that:

“What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for delay; lack of diligence on the part of the applicant”.


Reference can also be made to the decision of Court of Appeal in which held that:

MOBRAMA GOLD CORPORATION LTD Versus MINISTER FOR ENERGY AND MINERALS, AND THE ATTORNEY GENERAL, AND EAST AFRICAN GOLDMINES LTD AS INTERVENOR, TLR, 1998 Page 425


“It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents’ delay does not constitute a case of procedural abuse or contemptuous default and because the applicant” will not suffer any prejudice, an extension should be granted.

Now since the applicants have advanced and presented sufficient reasons for delay and the extent of such delay in their application, I have no reason to dis-grant their application. The argument by the learned State Attorney that the applicants have not indicated sufficient reason has no merit. It should be noted that the applicants are in the prison and the circumstance of his presence in the prisons also contribute for their delay. I am of the considered view that this application has merit and this court finds proper the applicants to be granted an extension of time to appeal out of time. The applicant shall file their appeal 21 days from the date of this ruling.

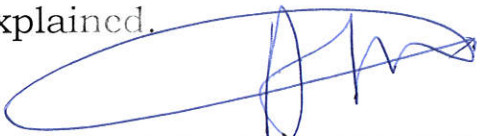



DR. A. J. MAMBI
JUDGE
21.06.2021

Ruling delivered in Chambers this **21st** day of **June, 2021** in presence of both parties.


DR. A. J. MAMBI
JUDGE
21.06.2021

Right of appeal explained.


DR. A. J. MAMBI
JUDGE
21.06.2021