

**IN THE HIGH COURT OF TANZANIA**

**(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**MISC. CRIMINAL APPLICATION NO.18 OF 2021**

*(Arising from Misungwi District Court in Criminal Case No. 110 of 2020)*

**SHISHI FUMBUKA ..... APPLICANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**RULING**

*Last Order: 28.06.2021*

*Ruling Date: 28.06.2021*

**A.Z.MGEYEKWA, J**

The applicant's application is brought under Section 361(1) and (2) of the Criminal Procedure Code 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 an affidavit deposed by one Bakari Chuwa Muheza, learned counsel for the Applicant.

The application was argued vide audio teleconference on 28.06.2021 whereas the applicant has the service of Mr. Bakari Muheza, learned Advocate, and the Republic had the service of Ms. Sabina State Attorney.

It was Mr. Bakari, learned counsel for the applicant who started to kick the ball rolling. He went straight to the point praying for this court to adopt the affidavit and grant the applicants' application for an extension of time to appeal before this court out of time.

He submitted that the applicant was represented by an Advocate at the trial court thus, he trusted that the learned Advocate has filed a Notice of Appeal. He added that when the Judgment was delivered, the learned Advocate was not present. He went on that the Magistrate was supposed to inform the applicant of his right to appeal but the same was not communicated to the applicant. He went on to state that the law permits an applicant to raise a point of illegality as a good reason for an extension of time. Fortifying his submission, he referred this court to paragraph 10 of his affidavit, he insisted that he has raised the points of law that attract the attention of this court to determine the appeal. To bolster his position, he cited the case of **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** [1992] TLR 185.

He retires praying this court to find that the applicant has good reasons and has moved this court to grant his application.

Responding, Ms. Sabrina, learned State Attorney for the Republic conceded to the applicants' application. She stated that the circumstances of the case are known since the applicant was in the cell and the matter before the trial court was handled by an advocate. Thus, the applicant was not able to file a Notice of Appeal within time. She went on submitting that, the applicant realising that the Advocate did not file the notice. When he embarked to file the instant application and found himself out of time. She ended by stating that the delay was out of the applicant's control.

In determining this application, the central issue for consideration is whether sufficient reasons have been advanced by the applicant to move this court to use its unfettered powers to grant the application for an extension of time to file an appeal out of time.

The Court of Appeal of Tanzania has vibrantly insisted in its decisions that the grant must be with sufficient reasons. In the case of **Blueline Enterprise Ltd vs. East Africa development Bank Misc. Civil Cause No. 135 of 1995, CAT** it was held that:-

*"...it is trite law that the 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...”*

The phrase 'sufficient reasons' has no constant definition but the court has constantly considered factors such that the delay was with sufficient cause, the degree of prejudice if any that party stands to suffer upon court exercise its unfettered discretion, the conduct of the party and the need to balance the interest of a party who has a constitutional fortified right of appeal.

Going through the appellant's affidavit specifically paragraphs 3, 4, 5, 6,7 and 8 the applicant learned Advocate's affidavit, he has narrated the circumstances underpinned the applicant intention to file the Notice of Appeal. From the affidavit, the learned advocate narrated what transpired from the date 16<sup>th</sup> March 2021 when the sentence was entered and the applicant was sentenced to serve 4 years in prison. He narrated that the matter handled by Mr. Maligisa Sakila, learned Advocate who later came to inform the applicant that he did not take any legal action to lodge the appeal , the deadline had already lapsed and was out of time in 10 days.

As rightly observed and stated by Ms. Sabrina that the circumstances were out of the applicant's control, I agree with her submissions that the applicant trusted and believed that his advocate would lodge a Notice of Appeal, unfortunately, that was not done. Therefore, the applicant finds

himself out of time to appeal before this court. It is my findings that the applicant has the intention to pursue her appeal and trying to find justice from the day she was convicted and sentenced. From the holding of **Osward Mwarabu Mwanzirubi v Tanzania Fish Processors 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 the relative one and is dependable upon the circumstances of each case. It is upon the party seeking the extension of time to provide the relevant material to move the court to exercise its discretion.”*

Applying the above authority, I am satisfied that the applicant has advanced sufficient reasons to warrant this court to grant her application. I see no reasons to venture to other grounds so stated by the applicant learned advocate since the above reason suffice to grant the applicant's application. I have also considered the fact that appeal is not only a statutory right but 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-stated reasons, I proceed to exercise this court's discretion and extend the time for the applicant to file a Notice of Appeal

before this court. The applicant shall file the notice of appeal within one month from the date of this order.

Order Accordingly.

Dated at Mwanza this date 14<sup>th</sup> June, 2021.



  
**A.Z.MGEYEKWA**  
**JUDGE**  
28.06.2021

Judgment delivered on 28<sup>th</sup> June, 2021 via audio teleconference whereas Mr. Bakari Muheza, learned counsel for appellant and Ms. Sabina, learned State Attorney for the respondent were remotely present.

  
**A.Z.MGEYEKWA**  
**JUDGE**  
28.06.2021