

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**AT SUMBAWANGA**

**MISC. CRIMINAL APPLICATION NO.55 OF 2020**

*(Originating from Criminal Case No. 178 Of 2019 of the District Court of  
Sumbawanga).*

**RICHARD SELEMAN @ SINKONDE.....APPLICANT**

**VERSUS**

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

**DATE OF LAST ORDER: 10/05/2021**

**DATE OF RULING: 22/07/2021**

**RULING**

**C. P. MKEHA, J**

In this application, the applicant has moved this court for orders that this honourable court be pleased to allow the application of filing notice of intention to appeal and petition of appeal to the High Court of Tanzania out of time. The application is supported by an affidavit duly sworn by the applicant himself.

In a nutshell, the applicant and 3 others who are not parties to this application were arraigned at the District Court of Sumbawanga for the offences of Conspiracy to Commit an Offence c/s 384 of the Penal Code Cap 16, three offences of forgery c/s 355 (a), 377 and 338 of the Penal Code, eight of offences of false information to persons employed in the Public

Service c/s 122 of the Penal Code. Consequently, the applicant was convicted as charged in respect of the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 10<sup>th</sup> and 12<sup>th</sup> counts and the sentences imposed were 8 years in imprisonment in respect of the 2<sup>nd</sup> and 4<sup>th</sup> counts, 2 years and 6 months imprisonment in respect of the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 10<sup>th</sup> and 12<sup>th</sup> counts. The sentences were ordered to run concurrently.

Being dissatisfied by the decision, the applicant wishes to appeal against it, hence this application of filing the appeal out of time.

In his sworn affidavit, the applicant claims that due to the delay in obtaining the copy of judgement and several prison's transfers upon him led to his failure to lodge the notice of appeal and appeal in time.

When this application came for hearing, the applicant appeared in person whereas Mr. Simon Peres learned State Attorney represented the Republic (Respondent).

On his side, the applicant opted to adopt the contents of his affidavit and prayed to this court that this application be granted, whereas Mr. Peres for the respondent argued that the notice for intention to appeal was not issued within time, and this entails that the applicant was satisfied with the sentence imposed to him, that, this application is a mere afterthought and that the applicant was at all times under Sumbawanga prison registry.

In this application, the issue is whether **sufficient cause** has been shown for the delay in filing the notice of appeal and petition of appeal.

To be able to provide an answer to the issue hereinabove it is imperative to know what amounts to **sufficient cause** and in doing so, I seek aid in the case of **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda, Civil Application No. 6 of 2001** (unreported), whereby Nsekela JA (as he then was) had this to say;

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

In this case at hand, the applicant depones in his sworn affidavit that since he was convicted and sentenced to prison, he has undergone several prison transfers as per timetable of the prison which made him delay in obtaining the copy of judgement. He also depones that the transfers were out of his control and hence failure to lodge notice of intention to appeal and petition of appeal within time.

There is no denial that the applicant has undergone several prison transfers since when he was convicted and sentenced to be imprisoned. These facts were not controverted by the Respondent for failure to file a counter affidavit.

**See: Yokobeti Simon Sanga vs. Yohana Sanga, Civil Application No. 1 of 2011, CAT (Unreported)**

It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.


It is true that, when a prisoner is being transferred to another prison for the reasons best known to the prison authority, it is quite difficult for the particular prisoner to obtain his important required copies for lodging an appeal within time in the presence of frequent transfers from one prison to another.

As such, this fact is a sufficient cause for the applicant to delay in lodging the notice for intention to appeal and petition of appeal within time. I in that regard differ with the learned State Attorney's reasoning and submissions.

Accordingly, the application for extension of time in which to file notice of appeal and petition of appeal is granted. The applicant is to file notice of appeal within 10 days and the petition of appeal within 30 days from the date hereof.

Dated at **SUMBAWANGA** this 22<sup>nd</sup> day of July, 2021.



  
**C. P. MKEHA**  
**JUDGE**  
**22/07/2021**

Date - 22/07/2021

Coram - Hon. W.M. Mutaki – DR.

Applicant - Present in person

Respondent - Mr. Kabengula – State Attorney

B/C - Zuhura

**Court:** Ruling delivered in the presence of Applicant in person and Mr. Kabengula State Attorney for the Republic.



  
**W.M. MUTAKI**  
**DEPUTY REGISTRAR**  
**22/07/2021**