

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

MISC. CRIMINAL APPLICATION NO. 76 OF 2020

**(C/F Criminal Appeal No. 13 of 2020 in the District Court of Hanang', Original Criminal Case
No. 42 of 2020 at Endasak Primary Court)**

WILLIUM EMMANUEL.....APPLICANT

VERSUS

MICHAEL LAMAY.....RESPONDENT

RULING

16/06/2021 & 11/08/2021

GWAE, J

The applicant, WILLIUM EMMANUEL wishes to invoke the jurisdiction of this Court to extend time under the provisions of section 14 of the Law of Limitation Act Cap 89 Revised Edition 2019. The intended order is meant to enable the applicant to file an appeal against the decision of the District Court of Hanang' at Katesh exercising its appellate which was delivered on 19th October 2020, out of time.

This application is accompanied by a supporting affidavit of the applicant whereas the respondent also filed an affidavit in reply. The following is gathered from the contents of both affidavits of the parties.

The applicant's reasons for the delay are such that, his appeal was once filed on time, that is on 19/11/2020 where the High Court registry received the

physical copy of his petition of appeal (Annexure A1). Unfortunately, being a layman and ignorant of the Electronic Filing System, he had no idea of the Electronic Filing System until when he was informed by a court clerk that his appeal has been improperly filed as he did not file it through the E-Filing system. Consequently, the applicant has found himself out of the statutory time to properly file another appeal as 19/11/2020 was the last date. He is thus asking this court to allow this application so that he can properly file the intended appeal as the delay arose out of his control.

The respondent in reply to the applicant's application strongly disputed the grant of this application stating that the applicant's excuse that he is a layman and ignorant of E-filing system are unfounded.

On hearing of this application, parties appeared in person, unrepresented, and being laymen, they had nothing useful to add to their affidavits.

Section 25 (1) (b) of the Magistrate Courts Act Cap 11 R.E clearly provides for time frame within when a part aggrieved by a decision of the District Court in the exercise of its appellate jurisdiction to appeal to the High Court within thirty (30) days from the date of a decision or order. The applicant herein claims that the decision intended to be appealed was delivered on the 19th October 2020 and that the petition of appeal alleged to be wrongly filed was presented for filing on the 19/11/2020 which is the last date. In any case the applicant herein who is

adamant to file his appeal could not do so as the time to file another appeal appears to have lapsed and this is the reason he is before this court seeking an order of enlargement of time.

The powers of this court to grant applications for extension of time are exercised upon good cause being shown. The question that follows is, whether the applicant herein has shown good cause for not filing his intended appeal within the statutory time. From outset, there is no good cause shown on the reason that at best what I have gathered is the applicant's ignorance in electronic filing of case which has nevertheless not been considered as good cause. See the case of **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported).

Even if I am to assume that this is a good cause taking into account that the applicant is a layman as he alleges and was not represented by an advocate and that electronic filing system being a new advanced system of filing cases in In our country yet I find that, the applicant's delay unjustifiable on the account of the days of delay. From the applicant's affidavit and the attachment thereto (annexture A1) the petition of appeal alleged to have been wrongly filed appears to have been filed on 19/11/2020 while the present application was filed on 15/12/2020. The applicant is expected to have given an account of what happened

or transpired from 19/11/2020 to 15/12/2020 which is about 26 days which is in my considered view, a long period ought to be accounted for.

In applications for extension of time the question of accounting days of delay is of principally important as was correctly and judicially stressed in **Sebastian Ndaula Vs. Grace Rwamafe**, Civil Application No. 4 of 2014 (Unreported). In the latter case the Court of Appeal of Tanzania held that;

“The position of this Court has consistently been to the effect that an application for extension of time, the applicant has to account for every day of delay.”

The applicant’s failure to account for the days of delay amounts to failure to advance sufficient cause, had the applicant’s delay be of three (3) or (4) days this court would have held otherwise as the applicant would have been found to have acted expeditiously soon after discovering of the anomaly as he would have been expected to look for someone to assist him but the presently, the delay of 26 days is so inordinately irrational in the circumstance of the case.


Consequently, this application lacks merit and it is dismissed for want of good cause for the delay. The respondent shall have the costs of this application.

It is so ordered.


M.R. GWAE
JUDGE
11/08/2021

Court: Right of appeal and its requisite procedure prior to appealing fully explained




M.R. GWAE
JUDGE
11/08/2021