

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA

MISC. CRIMINAL APPLICATION NO. 39/2021

*(Original Economic Criminal Case No.03/2018 from the
Resident Magistrates' Court of Singida District Court, Singida)*

NURU EMMANUEL MPIMBI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Date of Ruling: 26.8.2021

Dr. A. J. Mambi, J.

This is an application filed by the applicant. In her application supported by an affidavit, the applicant (**NURU EMMANUEL MPIMBI**) prayed to this court for enlargement of time to file an appeal out of time. The applicant in her application (**MISC. CRIMINAL APPLICATION 39/2021**), has prayed to this court to allow her to file appeal against the decision made by the Trial Court. The application is supported by an affidavit where the applicant has stated his reasons for their delay.

During hearing the applicant was represented by the learned Counsel Ms Zahara Chima while the Republic was represented by the learned State Attorney Ms. Kezilahabi.

In her submission, the applicant counsel briefly submitted that the applicant has advanced her sufficient reason for delay on her affidavit. the learned Counsel argued that the delay was beyond the control of the applicant since they tried to file an application online for several times but there was technical problem on the part of the court technology. The applicant Counsel argued that they informed the High Court Registrar if they can file physically but they were urged to file online.

In reply to the applicant application, the respondent through, the learned State Attorney did not supported this application on the ground that the applicant has not advanced sufficient reasons in her affidavit. She averred that there was no proof if there was failure on the use of Judiciary information system (e.g. JSDS).

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

It is clear from the records that the applicant has advanced sufficient reason for her delay as such delay was beyond her

control. There is no doubt that the delay was caused by the technical problem at the court the problem that could not be solved ~~any~~ the applicant albeit her several efforts to file her application online. This in my view was the sufficient reason though it will always depend on the circumstances of the case. However, the parties should not always use the technical problem as the sole ground of defense for delay, thus the applicant must explain to the court that there was actually technical problem on the use of JSDS (Judicial Dashboard System) in filling documents online and how such problem affected him/her from filling his/her documents. 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 Curt of Appeal of Tanzania in **REGIONAL MANAGER, TANROADS KAGERA 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 very 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 applicant in her affidavit have clearly indicated that she had sufficient reasons for her delay and technical problem and other contributing facts also contributed her delay in filling her appeal.

I have perused the applicant's document including her affidavit in line with her submission and found that the applicant has indicated reasonable or sufficient cause to enable this court to consider and grant her 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 (SUPRA)** , where the court observed that "what constitutes sufficient reasons cannot be laid down by any hard or fast rules and this must be determined by reference to all the circumstances of each particular case".

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”.

ference can also be made to the decision of Court of Appeal

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 in which the court held that:

“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 applicant has advanced and presented sufficient reasons for delay and the extent of such delay in her application, I have no reason to dis-grant her application. I am of the considered view that this application has merit and this court finds proper the applicant to be granted an extension of time to appeal out of time. The applicant shall file her appeal within twenty one days from the date of this ruling.

Dr. A. J. MAMBI, J

JUDGE

26/08/2021

Ruling delivered in Chambers this 26th day of August
2021 in presence of both parties.



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Dr. A. J. MAMBI, J

JUDGE

26/08/2021

Right of appeal explained.



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Dr. A. J. MAMBI, J

JUDGE

26/08/2021