

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. CRIMINAL APPLICATION NO. 184 OF 2020

**(Arising from Criminal Case No. 37 of 2018, in the District Court of
Rungwe District, at Tukuyu).**

FADHILI LANGSON WAYIMBA.....APPLICANT

VERSUS

REPUBLICRESPONDENT

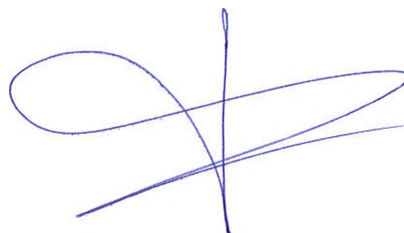
RULING

01. 06 & 08. 10. 2021.

Utamwa, J.

This is an application for extension of time to file a notice of intention to appeal and an actual appeal out of time. It was filed by FADHILI LANGSON WAYIMBA (the applicant). He intends to appeal against the judgment of the District Court of Rungwe District, at Tukuyu (the District Court), in Criminal Case No. 37 of 2018. The application was made under section 361 (2) of the Criminal Procedure Act Cap. 20 RE 2002, (Now R.E 2019).

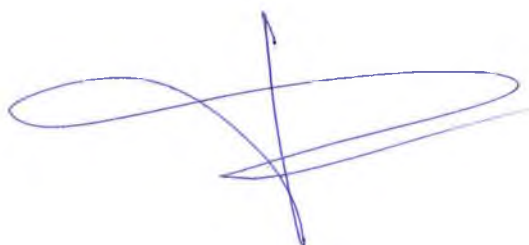
The application was supported by an affidavit of the applicant. The affidavit essentially deponed that, the applicant was convicted by the



District Court for the offence of rape contrary to section 130(1) and (2) of the Penal Code, Cap. 16 RE. 2019. He was sentenced to serve in prison for 30 years. He timely lodged his notice of intention to appeal and the actual appeal to this court. However, his appeal was struck out by this court (Nduguru, J.) on the 3rd of September, 2019 for defects in the notice of appeal. The defects in that notice was due to the fact that, he is a layman and is incarcerated in prison. He thus, depends on the prison authorities in pursuing his rights. The right to appeal is both a statutory and constitutional right of the applicant and this court has powers to grant the application.

The respondent Republic objected the application through a counter affidavit sworn by Ms. Sara Anesius, learned State Attorney. It basically disputed the fact that the applicant had previously filed the notice of appeal because he did not attach the copy thereof to his affidavit. He also disputed the fact that the previous appeal was struck out for a defective notice since the applicant did not attach any copy of the order to that effect. Again she disputed the blameworthiness thrown to the prison authorities by the applicant since no supportive affidavit was available from the prison authority to support the allegations that the applicant timely filed his appeal. The applicant thus, did not adduce any sufficient reason for granting the application.

At the hearing of the application, the applicant relied upon his affidavit and had nothing to submit before the court. The respondent was represented by Ms. Zena James, learned State Attorney. Her submissions to the court essentially underlined the contents of the counter affidavit.

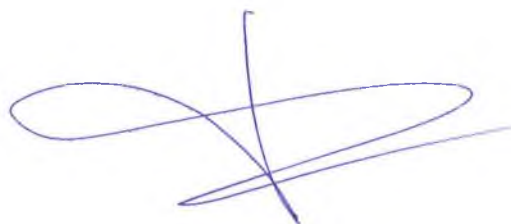


In his rejoinder submissions, the applicant argued that, his delay was also caused by the fact that, the judge who struck out his appeal did not timely give him the copy of his order.

In my view, for the nature of the application, it has to be guided by the branch of the law on extension of time. The law is trite and settled that, an extension of time is granted at the discretion of the court upon the applicant adducing sufficient reasons or good cause: see the decision by the Court of Appeal of Tanzania (CAT) in the case of **William Kasian Nchimbi and 3 others v. Abas Mfaume Sekapala and 2 others, Civil Reference No. 2 of 2015, CAT at Dar es Salaam** (Unreported). The court's discretion is of course, exercised judicially.

The major issue for determination is thus, whether or not the applicant in the application at hand has adduced good cause for this court to grant his application. In my view, the circumstances of the case attract a negative answer to the issue due to the following reasons: in the first place, it is clear that, the applicant intended to exclusively rely upon the doctrine of technical delay in this application though he did not expressly indicate so for being a layman.

The principle of technical delay just mentioned above, applies to both civil and criminal proceedings. It essentially guides that, the delay in taking an action within the time prescribed by the law caused by prosecuting another matter in court, though that other matter may be struck out for incompetence, constitutes a good cause for granting an extension of time to institute another matter of the same nature as long as the applicant for the extension of time acts promptly upon the previous matter being struck



out; see the decisions by the CAT in the cases of **Salvand K.A. Rwegasira v. China Henan International Group Co. Ltd, Civil Reference No. 18 of 2006** (unreported) and **Elly Peter Sanya v. Ester Nelson, Civil Appeal No. 151 of 2018 CAT at Mbeya**, (unreported judgment). In the matter at hand, the applicant showed in his affidavit that, he was delayed to appeal in time by prosecuting the previous appeal which was allegedly struck out by this court for a defective notice of appeal.

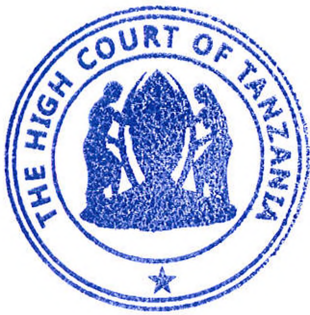
However, I do not think if the principle of technical delay may favour the applicant in the matter at hand. This is because, he stated in his affidavit as shown above that, his previous appeal was struck out on the 3rd September, 2019. He nevertheless, filed the application at hand on the 14th December, 2020. He thus, filed this application after a lapse of more than 15 months. The applicant in his rejoinder submissions also blamed this court (the Judge who struck out the appeal) for not supplying him promptly with a copy of the order striking out the appeal. However, this lamentation is untenable for being an afterthought since it did not feature in the applicant's affidavit. Furthermore, he did not state in his affidavit or elsewhere that he had applied for the copy of the order and he did not disclose the date when he did so (if he actually did so).

The applicant also tried to blame the prison authority for not acting promptly on his behalf. Nevertheless, due to his failure to disclose the efforts he had made in obtaining the copy of the order of this court striking out his appeal, his blameworthiness against the prison authority cannot be sustained. It cannot thus, be concluded that the applicant was prompt in



taking steps upon his appeal being struck out by this court so as the doctrine of technical delay can apply in his favour.

Owing to the above reasons I find that, the applicant has not adduced material facts for the court to apply the doctrine of technical delay in his favour. I accordingly answer the issue posed above negatively that, the applicant has not adduced good cause for this court to grant his application. I consequently dismiss the application. It is so ordered.



JHK. UTAMWA.

JUDGE

23/10/2021.