

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
MISCELLANEOUS CRIMINAL APPLICATION NO. 44 OF 2021
(Originating from The District Court of Mbeya at Mbeya,
Criminal Case No. 42 of 2019)**

MGALA PETER.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

R U L I N G

Dated: 11th & 20th October, 2021

KARAYEMAHA, J

This Court is being moved under section 361 (2) of the Criminal Procedure Act (Cap. 20 R.E. 2019) to grant orders for:

1. Extension of time within which to lodge notice of appeal and appeal out of time.
2. Any other orders the court may deem fit and just.

The application is brought by way of a chamber summons supported with an affidavit sworn by Mgala Peter giving reasons why he delayed to file his appeal. He averred that on 26/05/2020 his appeal was struck out for filing an improper notice of appeal. He further averred that the failure



by the Ruanda prison authority to comply with section 361 (1) of the CPA resulted into lodging defective notice of appeal.

The respondent filed a counter affidavit sworn by Sarah Anesius, in which the conduct of the applicant was put on spotlight. She conceded that the applicant's appeal was struck out but the applicant failed to account for each day of delay.

When the application was called on for hearing, the applicant appeared in person and not represented while the respondent/Republic was represented by Ms. Sarah Anesius, learned State Attorney.

On taking the floor, the applicant simply urged this court to grant his application.

In her submission, Ms. Sarah stated that the applicant's appeal was dismissed on 26/05/2020. Thereafter, the applicant took no any step to lodge an application for extension of time. She added that after one year of silence, the appellant has emerged with the current application without adducing sufficient reasons for the delay.

Rejoining, the applicant submitted that the process of preparing documents in the prison faces a lot of challenges some of which are delay to prepare documents or dumping them, hence resulting in delaying to file appeals. Another reason advanced by the applicant was the Prison Officer's decision to transfer him from Ruanda to Songwe prison. When he failed to

send his application he prayed and was transferred once again to Ruanda prison.

I have anxiously considered the reasons for and against the application. The position of the law is settled that a party seeking an extension of time has to show a good and sufficient cause for his delay. (See: ***Benedict Mumello v Bank of Tanzania***, Civil Appeal No. 12 of 2002 CAT (unreported) and ***Juluma General Supplies Limited v Stanbic Bank Limited***, Civil Application No. 48 of 2014 (unreported)). My duty now is to determine whether there is any justification for this court to exercise its discretion under section 361 (2) of the CPA. The provision states as follows:

"The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed."

The quoted provision above bestows discretion to the court to extend time but that discretion must be exercised judiciously. In principle, extension of time is a matter of discretion of the court and that the applicant must put material before the court which will persuade it to exercise its discretion in favour of an extension of time.

In ***Ngao Godwin Losero v Julius Mwarabu***, Civil Application No. 10 of 2015, the Court of Appeal laid down guidelines for the grant of extension

of time repeating its decision in the case of ***Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010 thus:

- a) *The applicant must account for all the period of delay.*
- b) *The delay should not be inordinate.*
- c) *The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- d) *If the court feels that there other sufficient reasons, such as the existence of a point of law sufficient importance; such as the illegality of the decision sought to be challenged."*

The rationale for imposing this stringent condition is to ensure that court orders do not benefit a party who is at fault. This is the reasoning distilled by the defunct East African court of Appeal in ***KIG Bar Grocery & Restaurant Ltd v. Gabaraki & Another*** (1972) E.A. 503 in which it was held that:

"...no court will aid a man to drive from his own wrong."

In applications for extension of time, sufficient cause or lack of it is gathered from affidavits filed in support of the applications. This wisdom takes into consideration the fact that affidavits are evidence, unlike submissions from the bar which serve as narrations that complement the evidence deposed on oath (***The Registered Trustees of the***

Archdiocese of Dar es Salaam v. The chairman Bunju Village and 11 Others, Civil Appeal No. 147 of 2006). Adequacy of the reasons for the applicant's failure to take steps, at a particular time, is gauged through these depositions.

Having assessed the application and taken into consideration reasons advanced, I am comfortable to hold that the applicant has failed to adduce good and sufficient cause. I say so because the applicant has failed to account for delay of a period of more than one year. This delay is immensely inordinate and the applicant hasn't shown diligence but is rounded by negligence and sloppiness in pursuing his right. The applicant's contention that he faced a lot of challenges in the prison relating to preparation of documents, delays preparation of documents or decisions by the prison officer's decision to transfer him from Ruanda to Songwe prison were not averred in the affidavit. They were simply stated in submissions which are not evidence.

I, thus, find a lot of laxity and un-seriousness in the applicants' conduct and contentions and going by the reasoning of the Court of Appeal in **Ngao Godwin Losero's case**, and hold that the application is not sufficiently supported to trigger the Court's discretion. I am now constrained to hold that the applicant should not benefit from his wrongs.



Consequently, and on the basis of the foregoing, I hold that the applicant has spectacularly failed to convince this Court that delays in lodging notice of appeal and the appeal were caused by any sounding reasons that fall in the realm of sufficient cause. In view thereof, I find that the applicant has failed the test set for grant of extension of time.

Accordingly, the merit lacking application is dismissed in its entirety.

It is so ordered.



Dated at **MBEYA** this **20th** day of **October, 2021**

A handwritten signature in black ink, appearing to read "J. M. Karayemaha".

J. M. Karayemaha
JUDGE