

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SUMBAWANGA
AT SUMBAWANGA
MISC. CRIMINAL APPLICATION NO. 37 OF 2020

*(From High Court Criminal Appeal No. 14 of 2014 originated from Mpanda District Court
Criminal case No 52 of 2011)*

MAYUNGA S/O SAMIKE.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of last order: 21/10/2021

Date of Ruling: 08/11/2021

NDUNGURU, J.

The applicant in this application one Mayunga s/o Samike has brought this application under Section 11 (1) of the Appellate Jurisdiction Act (Cap 141 R.E 2019). In his application the applicant prays for the following orders:

- (i) That this honourable court be pleased to extend time within which the applicant to lodge notice of appeal to the Court of Appeal out of time.
- (ii) This honourable court be pleased to pass any other order it may deem fit to grant.

The chamber application is duly supported by the affidavit duly sworn by the applicant. The respondent/ Republic opted not to file the counter affidavit. When the application was called up for hearing, the applicant appeared in person (unrepresented) while the respondent/ Republic enjoyed the service of Mr. John Kabengula the learned State Attorney. When the applicant was given an opportunity to submit in support of the application, he had nothing useful rather briefly referred to the reasons for the delay to file notice of appeal set forth in his affidavit. He prayed the court to adopt his application and affidavit supporting the application.

Going through the affidavit, the reasons for his delay to file notice of appeal is contained at paragraph 4, 5 and 6 of the said affidavit. At paragraph 4 of the affidavit the applicant states that

following the dismissal of his appeal by this court he timely filed his notice to appeal to the court of Appeal. That he signed the notice prepared by the prison authority the same was filed to this court.

That at paragraph 5 of the affidavit, the applicant states that unfortunately while his appeal was before the court of appeal it was found to be defective thus his appeal was struck out. Further that the notice being defective was not his fault because the same was prepared by the prison authority. That as a prisoner each and every thing is prepared by the prison authority. At paragraph 6 the applicant states that upon his appeal being struck out by the Court of Appeal, he was kept on transferring from one prison. He said he was transferred to Ruanda prison then within short period of time he was transferred to Msalato prison at Dodoma thus made it difficult for him to file this application promptly.

Mr. Kabengula did not object the application. He was of the submission that the application is brought under the proper law. Further that the grounds set in the affidavit are genuine thus urged the applicant's application be granted.

Having considered the submissions of the parties and examined the grounds stated in the applicant's affidavit, the striking question in this application is whether there is any justification for this court to exercise its discretion under Section 11(1) of the Appellate Jurisdiction Act. The said provision bestows this court with the discretion as it says:

11(1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.

It is trite that extension of time under the above provision is a matter of discretion on part of this court, but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case.

From the applicant affidavit, it is clearly noted that the applicant was willing and read to fully utilize the ten days' time of filing the notice of his

intention to appeal, but he could not due to his transfer to three different prisons at ago. With due respect, I take this as a crucial point into account.

Apart from the above, I have also considered the particular circumstances of the applicant. Being inmate serving time in prison, the applicant had no control over his affairs; he was at the mercy of the Officer In charge of the prison or the prison authority. As stated at paragraph 4, 5 and 6 of the affidavit, the applicant had been transferred to different prisons and due to geographical locations of the prisons it made him difficult to access and pursue his rights. In this regard, it is unfair to expect too much from him. See the case of **Buchumi Oscar V. Republic**, Criminal Appeal No. 295 "B" of 2011 Court of Appeal of Tanzania, **William Ndingu @ Ngoso V. Republic**, Criminal Application No. 3 of 2014 Court of Appeal of Tanzania and **Maneno Muyombe & Another V. The Republic**, Criminal Appeal No. 435 of 216, Court of Appeal of Tanzania (all unreported).

Basing on the foregone analysis, I am of the conclusion that the applicant's pursuit for extension of time has exhibited good cause. In the consequence I grant the application. The applicant is directed and ordered

to lodge his notice of appeal within fourteen (14) days from the date of delivery of this ruling.

It is so ordered.




D.B NDUNGURU

JUDGE

08/11/2021