

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 26 OF 2022**

(C/O Sumbawanga District Court Criminal Case No. 23 of 2021)

(J.O. Ndira, RM)

**JUMA S/O Sengerema ..... 1<sup>st</sup> Applicant**

**Alkado S/O Mnyema ..... 2<sup>nd</sup> Applicant**

**CHRISANT S/O Valerian @ Mwembe ..... 3<sup>rd</sup> Applicant**

**VERSUS**

**THE REPUBLIC ..... Respondent**

**RULING**

Date: 11 & 18/07/2022

**NKWABI, J.:**

Under the provisions of section 361 (2) of the Criminal Procedure Act Cap. 20 R.E. 2019, the applicants are praying for extension of time within which to lodge a notice of intention to appeal and a petition of appeal. The chamber summons is supported by a joint affidavit duly sworn by the applicants. There is also the affidavit of the Prison officer in charge of Sumbawanga prison.

The District Court of Sumbawanga convicted and sentenced the applicants to thirty years imprisonment for armed robbery offence.

In the unopposed applicants' joint affidavit, the applicants aver that the delay in lodging their notice of intention to appeal was due irregularities in the notice of intention to appeal which would make an appeal incompetent. It is due to that they solemnly took oath to and stated that failure to lodge a valid notice of appeal was not their fault and it was beyond their control as prisoners who depend on prison authority to lodge valid notice of appeal.

At the hearing of this application, the 2<sup>nd</sup> and 3<sup>rd</sup> applicants appeared in person, without legal representation. The 1<sup>st</sup> applicant had escaped under custody of the prison officers, so he was unavailable to prosecute his application. The respondent was represented by Ms Marietha Maguta, learned State Attorney.

In the course of the hearing, the 2<sup>nd</sup> and 3<sup>rd</sup> applicants adopted the contents of the affidavits in support of their application. Ms. Maguta for the respondent urged this court to grant the application.

In rejoinder, the 2<sup>nd</sup> and 3<sup>rd</sup> applicants insisted that the application for extension of time be granted.

I having considered this application, I think, for this court to grant an application like this the law, is already settled. One may make reference to the case of **Alliance Insurance Corporation Ltd vs Arusha Art Ltd, Civil Application No. 33 of 2015** CAT (unreported) where it was ruled that:

*"Extension of time is a matter for 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."*

The position ensures that no frivolous applications are granted to the detriment of the mundane law that litigation has to come to an end as held in **Stephen Masato Wasira v Joseph Sinde Warioba and the Attorney General [1999] TLR 334.**

In this application, the applicants made unsubstantiated claims that the notice of appeal lodged had irregularities. Such irregularities were not outlined and the copy of the notice that was received on time in the lower court was not attached to this application for this court to ascertain whether the claim is true. That position was stated in the case of **James Anthony Ifunda v Hamis Alawi**, Civil Application No. 482/14 of 2019, (unreported) (CAT) where it was held:

*"In addition, the alleged sickness is not supported by a medical report or medical chits which could be acted upon by the Court. In the circumstances, I am satisfied that the first reason for the delay advanced by the applicant is untenable."*

Delay of even a single day has to be sufficiently accounted for, see **Civil Application No. 218 of 2016 Interchik Company Limited v Mwaitenda Ahobokile Michael** (unreported) of which the ruling delivered by Hon. Ndika, Justice of Appeal, where he stated:

*"It is this Court's firmly entrenched position that any applicant seeking extension of time under Rule 10 of the Rules is required to account for each day of delay."*


Sloppiness of the officer in-charge of the prison or ignorance of the applicants do not amount to sufficient cause for extension of time, see for instance **Ally Kinanda & 2 Others vs. The Republic**, Criminal Application No. 1/2016, CAT, (unreported).

It is for the above reasons that this application is found to have no merits.  
I dismiss it.

It is so ordered.

**DATED** at **SUMBAWANGA** this 18<sup>th</sup> day of July 2022.



  
J. F. NKWABI

**JUDGE**