

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

AT SUMBAWANGA

MISCELLANEOUS CRIMINAL APPLICATION NO. 31 OF 2022

(C/O Sumbawanga District Court Criminal Case No. 79 of 2020)

(Kannyeye, M.M., RM)

ISACK S/O MAEMBE APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date: 27 & 29/07/2022

NKWABI, J.:

The applicant, in this application that was filed in this court on 14th June, 2022 is pursuing for an extension of time within which to lodge a notice of intention to appeal to this Court and petition of appeal out of time. The District Court of Sumbawanga convicted and sentenced the applicant to thirty years imprisonment for incest by males contrary to section 158 (1) (a) of the Penal Code Cap. 16 R.E. 2019 on 5th August, 2020.

The application is preferred under section 361(2) of the Criminal Procedure Act Cap. 20 R.E. 2019. It is supported by the affidavit duly sworn by the applicant and that of the Prison officer in-charge of Sumbawanga remand prison.

I will let the applicant speak for himself by quoting the orders he is seeking as per the chamber summons:

1. *"That the honourable court be pleased to allow the application of filling notice of intention to appeal and petition of appeal to the High Court of Tanzania out of time.*
2. *That any other order(s) this court deems fit to grant."*

In the unopposed applicant's affidavit (as the Respondent did not file a counter-affidavit), the applicant attests that the delay in lodging his notice of intention to appeal and the petition of appeal was due to:

3. *"That after been convicted immediately I was transferred from Sumbawanga remand prison to Kitete prison within Nkasi District in Rukwa region and later to Sumbawanga remand prison according to the prison's time table, the something which led me to delay filing notice of intation to appeal and petition of appeal on time.*
4. *That the appeal out of time has come due to human imperfectness and was out of my control."*

The affidavit of the Officer in-charge of Sumbawanga remand prison deposes that:

- a. "That he failed to appeal to the High Court since at the first instant when he was convicted he had been transferred from Sumbawanga remand prison to Kitete prison within Nkasi District in Rukwa region according to prison's time table.*
- b. That, to file notice of intation and petition of appeal on time could not be done since it was out of his control*
- c. That, the applicant is seeking leave of the High Court to appeal out of time and that as an officer in charge I do recommend him."*

Be that as it may be, DC. Criminal Appeal No. 94 of 2021 filed by the Applicant was struck out on 10th May, 2022 by his Lordship Ndunguru, Judge for the petition of appeal was filed in this Court after 45 days had lapsed.

At the hearing of this application, the applicant appeared in person, unrepresented while the respondent was efficiently represented by Ms. Marietha Maguta, learned State Attorney. In the course of the hearing,

the applicant contended that he lodged an appeal, which was dismissed for being time limited (barred). It is thus he filed this application.

To venture her opposition to this application in the submission in reply, Ms. Maguta maintained that the applicant seems not to know the grounds of his application. She urged it be dismissed. Ms. Maguta expounded her position to the effect that the notice was in time but the petition of appeal was lodged outside time. Even the reasons explained in the affidavit are unreasonable. Applicant had nothing useful in rejoinder submission.

I have given deserving consideration to this application for extension of time to file notice of intention to appeal and a petition of appeal to this Court against the decision of the District Court in Criminal Case No. 79 of 2020c, but I have found no sufficient cause for me to use my discretion and grant the application.

There is a clear position of the law to the effect that an applicant, in an application of this kind, has to put before the Court material(s) to enable the Court to grant him extension of time to do what ought to be done but that time had lapsed. This is as per **Alliance Insurance Corporation**

Ltd vs Arusha Art Ltd, Civil Application No. 33 of 2015 CAT
(unreported):

"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 applicant in this application failed to demonstrate the alleged transfer by the letter that transferred him to another prison.

It is also the law of this land that the applicant who is seeking extension of time, has to account for each day of the delay as per **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 192/20 of 2016 CAT (unreported). The position ensures that no frivolous applications are granted to the detriment of the trite 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 applicant made unsubstantiated claims that he was being transferred from one prison to another before he lodged his petition of appeal. As such, the applicant has failed to account for each day of the delay.

I note that the officer in-charge of the prison, in his affidavit shows that his office could have been slopy in handling the matter by transferring the applicant from one prison to another. For this position of the law, see **Ally Kinanda & 2 Others v. The Republic**, Criminal Application No. 1/2016, CAT, (unreported). With respect, and in my view, negligence of the applicant or the prison officer in-charge cannot be a good ground for extension of time, see **William Shija & Another v Fortunatus Masha [1997] TLR 213** (CA), where it was said:

"In determining whether the application should nonetheless be granted, the court took into account the counsel had been negligent in adopting the correct procedure and this could not constitute sufficient reason for the exercise of the court's discretion."

Consequently, this application is found to be unmerited. I dismiss it.

It is so ordered.

DATED at SUMBAWANGA this 29th day of July 2022.




J. F. NKWABI
JUDGE