

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA DISTRICT REGISTRY

AT SONGEA

MISCELLANEOUS CRIMINAL APPLICATION NO. 21 OF 2022

(Originating from Criminal Case No. 39 of 2021 Namtumbo District Court at Namtumbo)

HASSAN AMIDU@ULERA.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

Date of last order: 03/08/2022

Date of Ruling: 03/08/2022

MLYAMBINA, J.

This is an application for extension of time within which the Applicant can lodge notice of appeal and appeal out of time against the decision of the District Court of Namtumbo in *Criminal Case No. 39 of 2021*. The application is made by way of chamber summons under *Section 361 (2) (a) of the Criminal Procedure Act [Cap 20 R.E. 2019]* and it is supported with the affidavit of Hassan Amidu @ Ulera, the Applicant. The affidavit in support of the application was based on the following reasons:

One, the Applicant was charged, convicted and sentenced seven (7) years imprisonment for the offence of cultivation of prohibited plants contrary to

the Drugs and Enforcement Act [Cap 295 R. E. 2019]. *Two*, the Applicant was convicted by the Namtumbo District Court on 29th April, 2021 on the charged offence. *Three*, after the conviction and sentence, the Applicant failed to lodge notice of appeal and petition of appeal within time due to the reason that he was transferred or shifted from Songea Prison to Kitai Prison at Mbinga. Hence, the Applicant failed to lodge notice of appeal on time. *Four*, the Applicant's right of appeal is not only statutory but also Constitutional.

On 3rd August, 2022 when the application came for hearing, the Applicant reiterated the reasons stated in his affidavit and added that he stayed at Kitai Prison for five months.

Further, the Applicant added two reasons in support of his application. First, he attempted to issue notice of appeal three times but the Prison Officers did not file the same. Second, he is ignorant of the law and procedure. As such, the Applicant did not know what to do.

In reply, the Republic filed a Counter affidavit sworn by Generosa Montano, State Attorney from the National Prosecution Service at Ruvuma Region. They objected the application on inter alia ground that the Applicant did not disclose sufficient reason (a good cause) for his delay. The Republic stressed that the Applicant being transferred from Songea Prison to Kitai Prison in

itself without proof of the same is not sufficient ground for granting extension of time.

At the hearing, learned State Attorney Hellen Chuma supported their objection to the application. She submitted that the Applicant did not state as to when he was transferred from Songea Prison to Kitai Prison. More so, there is no any supporting affidavit from the Principal of the Prison or Admission Officer to prove that the Applicant issued a notice of appeal.

The other reason advanced by Ms. Hellen Chuma was that the Applicant did not account for each day of delay for a year period of time. In support of the reason that the Applicant has to advance sufficient reason and account each day of delay, Ms. Hellen cited the case of John **Lazaro v. The Republic**, Criminal Application No. 34/4 of 2017, Court of Appeal of Tanzania at Bukoba (unreported) in which the Court at page 6-7 of its decision cited with approval its earlier decision in the case of **Lyamuya Construction Company Limited v. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) in which the same Court issued guidelines by formulating as to what amounts to good cause as follows:

- (a) Applicant must account for all the period of delay.
- (b) Delay should not be inordinate.

- (c) Applicant must show diligence and not apathy negligence or sloppiness
- (d) Existence of point of law of sufficient importance.

Ms. Hellen added that, there is no format of lodging notice of appeal. Thus, the Applicant could lodge his notice orally on the day the Judgement was pronounced against him or file the notice in writing within time. Above all, ignorance of the law is not an excuse in law.

I have gone through the application and the supporting affidavit. I do agree with the Applicant that it is his statutory right to appeal against the decision of the trial Court under *Section 359 (1) of the Criminal Procedure Act [Cap 20.R. E. 2022]*. I further agree with him that right of appeal is a Constitutional right well safeguarded under the provisions of *Article 13 (6) (a) of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time.*

However, under the provision of *section 361 (1) (a) of the Criminal Procedure Act (supra)*, the notice of appeal which initiates an appeal must be issued within ten days from the date the impugned decision was issued. The Applicant did sleep over his right of appeal for a good not less than twelve (12) months. He neither lodged notice of appeal orally or in writing within the required statutory ten days' time. The applicant ought to have had

accounted for each day of delay as it was stated in dozens of cases including the case of **Lyamuya Construction Company Limited** (*supra*).

As properly submitted by the Republic, the Applicant was duty bound to advance sufficient reasons warranting this Court to grant his application.

The Applicant's ignorance of the law cannot be a good ground for extending time within which he can appeal. In the Case of **Omari R.**

Ibrahim v. Ndege Commercial Services Limited, Civil Application No 83/01 of 2020. (unreported), Court of Appeal of Tanzania, it was explained

that:

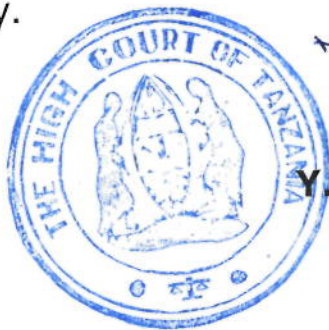
It should be stated once that, neither ignorance of the law nor counsel's mistake constitutes good cause in terms of Rule 10 of the Rules. (See **Bariki Israel v. The Republic**, Criminal Application No. 4 of 2011 and **Charles Salungi v. The Republic**, Criminal Application No. 3 of 2011 (both unreported)).

Indeed, in the case of **CRDB (1996) Limited v. George Kilindu**, Civil Appeal No. 162 of 2006 Court of Appeal of Tanzania (unreported), it was held that:

Sufficient cause may include, among others, bringing the application promptly, valid explanation for the delay and lack of negligence on the part of the Applicant.

Moreover, as submitted by Ms. Hellen, the Applicant has not stated as to when he was transferred from Songea Prison to Kitai Prison and there is no any supporting affidavit from the Principal of either of the Songea or Kitai Prison or Admission Officer of either of the two Prisons to prove that the Applicant issued a notice of appeal three times timely. In the case of **Benedict Kimwaga v. Principal Secretary, Ministry of Finance**, Civil Application No. 31 of 2000, Court of Appeal of Tanzania at Dar es Salaam (unreported), it was stated where an affidavit mentions another person, an affidavit of that other person would be required, otherwise the respective statement in the affidavit would be hearsay.

In the event, the application stands dismissed for want of merits. Order accordingly.



Y. J. MLYAMBINA
JUDGE
03/08/2022

Ruling delivered and dated 3rd day of August, 2022 in the presence of the Applicant in person and learned State Attorney Ms. Hellen Chuma for the Respondent.



Y. J. MLYAMBINA
JUDGE
03/08/2022