

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 45 OF 2021

(C/O Criminal Appeal No. 62 of 2017 originating from Criminal Case no. 853/2016
Sumbawanga Urban primary Court)

JAMES S/O MALANGO APPLICANT

VERSUS

OSCAR S/O MWANANZUMI RESPONDENT

Date: 03 & 09/02/2022

RULING EX-PARTE

Nkwabi, J.:

The applicant is mainly praying for extension of time within which to lodge a notice of intention to appeal to this court out of time. The application is brought under section 25(1)(b) of the Magistrates Courts Act, Cap. 11 R.E. 2018. It is supported by the affidavit duly sworn by the applicant. There is also an affidavit of the officer in-charge of Sumbawanga Prison certifying the applicant's application.

The applicant was unable to find the respondent in order to serve him with the application hence the hearing of this application proceeded ex-parte. The applicant appeared in person and advanced the application by himself.



In the hearing ex-parte, the applicant submitted that he was late to file his appeal on time because he was being transferred from one prison to another. He also did not get a copy of the judgment on time. He received the copy of the judgment in the year 2018. Also, the prison had no computer to type his documents.

The applicant in his affidavit in support of the application avers that he lodged the notice of intention to appeal and petition of appeal to the High Court on time via prison authority. That, failure to lodge a notice of intention to appeal and petition of appeal was not his fault and beyond his control as a prisoner he depended on prison authority to lodge notice of appeal and petition of appeal. It is because of those averments, in the affidavit, the applicant prayed that his application be granted by this court.

In a certifying affidavit, the officer in-charge averred that the applicant presented his notice of intention to appeal in his office but the office failed to forward to this court because of things which were out of control.

I have carefully considered this application, I am of the firm view that the same has to fail. It has to fail in view of the fact that the affidavit of the officer in-charge of the prison has nothing in substance to be the basis of

this court discretionary allow the application. This application of the applicant offends the decision in **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 reasons which made the office of the officer in-charge fail to bring the necessary documents to the court are unknown to this court. The situation, if permitted, would lead to flimsy applications. If one looks at the submissions of the applicant, they contradict with the averment found in his affidavit. In **Regional Manager TANROAD Kagera v Ruaha Concrete Co. Ltd, CAT Civil application No. 96 of 2007, at DSM (Unreported)** it was held:

"What constitutes "sufficient reason" cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules."

It should also be borne in mind that after the time for lodging appeal had lapsed, the party who won the case could have believed that the case has been finally determined as per Makame, Ag. J., as he then was, in **Tanzania Tailors v. Keshvaji Lalji [1970] H.C.D. no. 236** put it:

...As it is, time having expired, the successful party must have assumed that the fight was over, and unless sufficient reason is shown, which it has not been, it would be unfair to dislodge him from his seat of victory."

The decision of the district court in Criminal Appeal No. 62 of 2017 was delivered on 14/02/2018. Going by the attached copy of the judgment the judgment landed the office of officer in-charge of the prison on 06/11/2018. This application was filed in this court on 25/10/2021 almost three years after the copy was sent in prison. I take judicial notice that the distance from the prison office to the High Court building is hardly three kilometres away. Yet documents were delayed to be brought to the court. The appellant, even if was in prison, ought to make follow-up of the alleged court documents with the prison officer even by writing letters to the prison officer and a copy of the same be served to the court where an appeal is intended to be lodged. This is to safeguard the rights of the other party to the case. This is because, litigation has to come to an end

as stated in **Stephen Masato Wasira v Joseph Sinde Warioba and the Attorney General [1999] TLR 334:**

Further, his submissions in court that he was late to file his appeal on time since he was being transferred from one prison to another. He also did not get a copy of the judgment on time. He received the copy of the judgment in the year 2018. Also, the prison had no computer to type his documents do not find purchase with me as they are contained neither in his affidavit nor that of the prison officer in-charge. I follow the decision in **Civil Application No. 44/08 of 2017 Elfazi Nyatega & 3 Others V. Caspin Mining Ltd CAT Mwanza Oct. 2018** Mwarija JA:

"As to the reason relating to the death of the applicants' advocate, that fact is not contained in their affidavit and cannot therefore, be considered with a view of finding how it contributed to the delay."

In short, the applicant has failed to put forward the material and sufficient reason(s) for this court to use its discretionary power to extend time within which the appellant would lodge the notice of intention to appeal and the petition of appeal. A court of law cannot act on extraneous matters that is why a party is enjoined to put forward to the court the materials necessary to enable the court to extend time.

In the premises, this application is dismissed.

It is so ordered.

DATED at **SUMBAWANGA** this 9th day of February 2022.




J. F. Nkwabi
JUDGE