

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

(PC) MISC. CRIMINAL APPLICATION NO 20 OF 2022

(Originating from Criminal Appeal NO 41 of 2021 at Musoma District Court, Original Criminal Case no 350 of 20021 at Musoma Urban Primary Court)

ADAM NGOMERO APPLICANT

VERSUS

OMARY EKOKORO RESPONDENT

RULING

9th August & 9th August, 2022

F. H. MAHIMBALI, J.

This applicant in this case was convicted by the District Court of Musoma sitting as first appellate court (Criminal Appeal No 419 of 2021) against the decision of Musoma Urban Primary Court in Criminal Case No 350 of 2021.

In brief he was acquitted by the trial court but convicted by the District Court and sentenced to serve one year imprisonment. He has been aggrieved by the decision. He wants to appeal to this court. As he is out of time, has filed this application for extension of time to file his appeal out of time.

As to why he is out of time, in his sworn affidavit has deposed that on 18th day of March, 2022 he lodged his appeal to this court (High Court) but his appeal was rejected as it was supposed to be filed at the District Court as this matter originated from the primary court. He was informed so on 24th March, 2022. He then filed at the District Court (on 25/3/2022) where he was informed that his appeal was time barred. Thus, the basis of the current application.

During the hearing of his application while adopting his affidavit he added that as he was a prisoner he could not be supplied with his documents timely thus, the reason of his delay.

In countering the application the respondent dismissed the applicant's application for lack of evidence. That what he averred is not supported by evidence (affidavit). On that vein, he prayed this application to be dismissed with costs.

I have digested the applicant's prayers, the affidavit and oral submissions made. I have equally digested the respondent's arguments against the application. The question to ask is whether the application is merited.

In digest thereof, I am satisfied that the application is not merited. I say so because the said reasonable cause has not been explicitly

established. That he filed his application timely on 18th March, 2022 at High Court is not established by evidence. Nor is there any evidence that he subsequently did so at District Court after the said rejection by the High Court. He who claims must establish. The applicant has not established this assertion as alleged.

By the way, wrong filing of the case to the proper registry is exhibition of ignorance of the law which is not amongst the grounds/reasons for extension of time.

As it is the court's desecration to allow or disallow the application, Judiciously the application is not merited. The same is hereby dismissed.

Each party to bear its own costs.

DATED at MUSOMA this 9th day of August, 2022.




F. H. Mahimbali

JUDGE

Court: Ruling delivered this 9th day of August, 2022 in the presence of both parties and Mr. Gidion Mugo, RMA


F. H. Mahimbali

Judge