

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

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 30 OF 2022

(C/O Mlele District Court Criminal Case No. 73 of 2020)

(A.R. Ngowi, RM)

ERICK S/O MWANGOKA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date: 27/07 & 15/08/2022

NKWABI, J.:

The applicant has applied to this Court for extension of time within which to file a notice of intention to appeal to this court and lodge the petition of appeal out of time. The District Court of Mlele convicted and sentenced the applicant to five years imprisonment for stealing by agent which is contrary to section 273 (b) of the Penal Code Cap 16 R.E. 2019. The conviction of the appellant was based on his own plea of guilty. That was after a full trial.

The application is brought under section 361 (1) (a) and (b) and (2) of the Criminal Procedure Act Cap. 20 R.E. 2019. It is supported by the affidavit

duly sworn by the applicant as well as that of the Prison officer in-charge for Mpanda prison.

In the unopposed applicant's affidavit, the applicant avows that his failure to lodge his appeal to the High Court on time was due to computer breakdown at the particular time.

There is also an affidavit duly sworn by the officer in-charge of Mpanda remand prison certifying what was averred by the applicant. He had these to testify in the affidavit:

- 1. "I received the complaint of the above applicant that he lodged his appeal out of time due to delayment of my office.*
- 2. That the reason attributed of the appeal delayment was caused by my office due to when the applicant convicted and according to information I received is that at that time there was only one computer machine which was broken up so my office failed to comply with section 361 (1) of the CPA Cap. 20 R.E. 2002."*

Meanwhile the hearing of this application was conducted in the presence of the applicant who appeared in person. The respondent was ably represented by Ms. Marietha Maguta, learned State Attorney.

In the hearing, the applicant adopted the contents of his affidavit as his submission while Ms. Maguta resisted the application arguing that the reason advanced that the computer was broken down in the affidavits is mere hearsay. For that reason, it does not amount to sufficient cause for extension of time. The application ought to be dismissed, Ms. Maguta urged.

It was in his rejoinder, the applicant submitted that he did not know that the computer operator ought to have sworn an affidavit as the defect of the computer.

The guiding principles in respect of affidavits can be seen in a few decisions of this Court as follows. In **Duncan v. Zanzira** [1970] H.C.D. No. 262 in which the applicants sought for an extension of time to file a Record of Appeal. Bramble, J., as he then was, held:

(1) "It is a settled principle that where an affidavit is made on information it should not be acted on by any Court unless the sources of the information are specified. It is clear that in portions of the affidavit above that the deponent was stating acts which were to his knowledge and facts which were from information and since the sources of the latter were not given those facts would not be considered by the court. In the case of the National Bank of Commerce v. Shankerbhai Desai and others (1969) H.C.D. 206 it was held that, although an affidavit was defective, where there are facts properly deposed to on which the court could act it should do so. The question of a possible denial of justice is therefore one of the considerations in applications of this nature. Where, however, an applicant is seeking the court's indulgence he must show sufficient reason. I am not persuaded that a refusal to extend the time will result in denial of justice and the applicants have not shown sufficient reasons to

warrant the court's exercising its discretion in their favour."

(4) "The application is dismissed with costs."

Another decision is the case of **Phantom Modern Transport (1985) LTD and D.T. Dobie (Tanzania) Ltd**, it was held:

"Where defects in an affidavit are inconsequential, those offensive paragraphs can be expunged or overlooked, leaving the substantive parts of it intact so that the court can proceed to act on it."

Since the applicant and the Officer in- charge of Mpanda remand prison did not disclose the source of information as to the computer breakdown, this court cannot act on both affidavits just as per the decision in Duncan's case (supra). The defects are consequential as they go to the root of the matter.

It is thus this Court is entitled to rule that the applicant has failed to account for each day of the delay as held in **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 192/20 of 2016 CAT (unreported) where it was held:

"... Delay of even a single day has to be accounted for otherwise, there would be no point of having rules prescribing periods within which certain steps have to be taken."

Consequently, I find this application is devoid of merits. I dismiss it.

It is so ordered.

DATED at SUMBAWANGA this 15th day of August 2022.




J. F. NKWABI
JUDGE