

IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO 11 OF 2022

*(Originating from Criminal Case No 21 of 2020 In the District Court of
Liwale at Liwale)*

HASHIMU AHMAD HASHIMU.....APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Muruke, J.

Hashimu Ahmad Hashimu was convicted by the District Court of Liwale for an offence of grave sexual abuse, contrary to section 138C(1) (a) (2) (a) of the penal code, Cap 16 R.E 2019, thus sentenced to conditional discharge for twenty years in criminal case No. 21 of 2020. He prepared notice of intention to appeal, but before filing his appeal, he noticed that same was out of time, thus present application for extension of time to file appeal.

On the date set for hearing, applicant was in person, while respondent was represented by Wiburud Ndunguru State Attorney. Applicant requested court to adopt his affidavit as submission in support of the application. Respondent did not file counter affidavit and did not object the application.



According to affidavit in support of the application 5 and 6 reads that:-

I received copy of judgment and proceedings of this case on 17th April 2021 although they were certified on 10th September 2020. I was then transferred to Lilungu prison in Mtwara from Lindi Central Prison.

Having gone through applicant's affidavit, it is worth insisting that, it is a constitutional right to whoever aggrieved to appeal to the superior court. Such right should be accompanied with a right to apply and granted extension of time if the delay was caused by sufficient reason. To deny extension of time, is equal to denying a person the right to exercise his Constitutional right to appeal. In application for extension of time the applicant must show that there is sufficient reason/good cause for the delay. This was held in the case of **The International Airline of the United Arab Emirates V. Nasser Nasser**, Civil Application No. 569/01 of 2019 CAT (unreported) that;

"It is trite law that in an application for extension of time to do a certain act, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time."

However, despite that constitutional right, yet to extend time is purely vested to the discretion of the court, which discretion has to be exercised judiciously, upon sufficient cause. Indeed, what amount to good cause/sufficient cause is not defined, but it is the duty of the court to treat each case depending on its circumstances as stated in various cases including in the case of **Emmanuel Bilinge Vs. Praxeda Ogwever & Another**, Misc. Application No. 168 of 2012 (unreported) it stated that;

"What constitutes reasonable or sufficient cause – has not been defined under the section because that being a matter for the court's discretion cannot be laid down by

any hard and fast rules but to be determined by reference to all the circumstances of each case."

Similar principle was stated in the case of **Regional Manager Tanroads Kagera Vs. Ruaha Concrete Co Ltd, Civil Application No. 96 of 2007**, where the court observed the following:

*"What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means **the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules**" (emphasis supplied).*

In the case of **Zaida Baraka & 2 Others Vs. Exim Bank (T) Limited, Misc. Commercial Cause No. 300 of 2015** (unreported), when quoted the principle developed in the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported) the court stated that;

"As a matter of general principle, it is the discretion of the court to grant extension of time. But that, discretion is judicial and so it must be exercised according to the rules of reason and justice and not according to private opinion or arbitrarily."

Applicant has explained in his affidavit at paragraphs 5 and 6 that, delay to file his appeal on time was caused by being shifted from one prison to another until landed at Lilungu Prison where he managed to file present application with an assistant Prison officers. Court of Appeal in the case of **Mobrama Gold Corporation Ltd Vs. Minister for Energy and Mineral, and East African Goldmines Ltd as Intervor [1998] TLR 245**, observed that;

“It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents’ delay does not constitute a case of procedural abuse or contemptuous default and because the respondent will not suffer any prejudice, if extension sought is granted.”

What applicant is requesting before this court, is extension of time to file appeal for him to be heard. The right to be heard is safeguarded in the constitution. Article 13(6) (a) of the constitution provides in the Kiswahili version thus;

“(6) Kwa madhumini ya kuhakikisha usawa mbele ya sheria, mamlaka ya nchi itaweka taratibu zinazofaa au zinazo zingatia misingi kwamba;”

“(a) Wakati wa haki .na wajibu wa mtu yeyote vinahitajika kufanyiwa uamuzi wa mahakama au chombo kingine kinacho husika, basi mtu huyo atakuwa na haki ya kukata rufaa au kupata nafuu nyingine ya sheria kutokana na maamuzi ya mahakama au chombo hicho kinginecho kinachohusika.”

In the circumstances explained by the applicant in his affidavit, there is no procedural abuse, more so, respondent will not suffer any prejudice as both will have right to be heard on intended appeal. I am unable to refuse extension sought. Thus, extension of time granted. Applicant to file his appeal within 45 days from 15th August 2022, and serve respondent accordingly.



Z. G. Muruke
Z. G. Muruke

Judge

15/08/2022.

Ruling delivered in the presence of Wilbroad Ndunguru State Attorney for the respondent, and applicant in person.



A handwritten signature in blue ink, appearing to read "Z. G. Muruke".

Z. G. Muruke

Judge

15/08/2022.