

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**MISC. CRIMINAL APPLICATION NO. 25 OF 2022**

(C/O District Court of Sumbawanga Criminal Appeal No. 7 of 2021 originating from criminal case no 747 of 2020 from the Primary Court of Sumbawanga District at Sumbawanga Urban)

**CHRISTINA D/O MAZWILE ..... APPLICANT**

**VERSUS**

**JENEROZA D/O ZENO @ SENGU ..... RESPONDENT**

**RULING**

Date: 20/07 & 26/08/2022

**NKWABI, J.:**

The applicant has knocked the door of this Court praying this for extension of time within which to file her appeal to this Court out of time. The trial Court acquitted the respondent with the offence of grievous harm contrary to section 241 of the Penal Code Cap. 16 R.E. 2019. The case was instituted by the appellant. On appeal to the District Court, she lost her appeal as it was dismissed. Her attempt to appeal to this Court was ruled incompetent and struck out as the petition of appeal indicated was lodged in the District Court prior to the appeal in the District Court being determined.

The application is brought under section 25(b) of the Magistrates' Courts Act Cap. 11 R.E. 2019, Rule 10 of the Judicature and Application of Laws (Criminal Appeals and Revisions in Proceedings originating from Primary Courts) Rules 2021, Government Notice No. 390 published on 14/05/2021. It is supported by the affidavit duly sworn by the applicant as well as that of Arbogast Jeronimo Mwanandjenje Registry Assistant in-charge of the Registry of the District Court of Sumbawanga.

In her affidavit, the applicant avows that she lodged her appeal in time but after the decision of the district court but it was wrongly indicated that it was lodged prior to the judgment of the District Court being delivered. Her averment in paragraph 4 of the affidavit in support of the application was supported by the affidavit of the Registry Assistant on paragraph 6 to the effect:

*"That my office has mistaken when receiving the petition of appeal of the Appellant, signed and received it by writing wrong date instead of 04/07/22021 I wrote 04/03/2021."*

The respondent seriously resisted the application denying every significant averment made by the applicant.

During the hearing of the application, both parties appeared in person, unrepresented. Both parties stood to their guns. While the applicant prayed her application be granted, the respondent prayed it be dismissed for being unmerited.

I have considered the arguments of both parties. I think that the delay, could be said to be what has come to be known as technical delay. The applicant lodged her appeal on time but it was wrongly indicated it was lodged earlier than the date the judgment of the District Court was delivered. The mistake cannot be shouldered upon the appellant. After the appeal was struck out, the applicant promptly filed this application. As such, I am of the firm view that the applicant has managed to give sufficient cause for the delay thus accounting for each day of the delay. In my decision I have sought admiration in the decision of his Lordship Masara, J. in **Napaya Kilevori v Ngida Loisule**, Misc. Civil Application No. 81 of 2019 that indeed, technical delay is excusable in the terms as this Court stated though in a different situation that:


*"That the days utilized by the appellant to get copies of judgment and decree to be excluded from computation of delay."*

All said and done, this application is found to have merits. It is allowed.  
The applicant is given 21 days from the date of this ruling to file her  
intended appeal in this Court.

It is so ordered.

**DATED** at **SUMBAWANGA** this 26<sup>th</sup> day of August 2022.



  
J. F. NKWABI  
**JUDGE**

Date - 26/08/2022  
Coram - Hon. M.S. Kasonde - DR  
Applicant - Present in person  
Respondent - Present in person  
B/C - A.K. Sichilima – PRMA


**Applicant:** The matter is for ruling and I am ready.

**Respondent:** Me too.

**Sgd: M.S. Kasonde**  
**Deputy Registrar**  
**26/08/2022**

**Court:** Ruling delivered this 26<sup>th</sup> day of August, 2022 in the presence of the applicant and respondent in person.



  
**M.S. Kasonde**  
**Deputy Registrar**  
**26/08/2022**