

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MOROGORO)
AT MOROGORO**

MISC.CRIMINAL APPLICATION NO. 20 OF 2022

(Originating from Criminal Case No. 353 of 2020 in Kilombero District Court)

NATALIA KALIMANG'ASI @ SELESTINE KIMBWANDA

@ MUHUWA APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

Hearing date on: 13/7/2022

Ruling date on: 15/7/2022

NGWEMBE, J:

The applicant after being out of time to institute his appeal against conviction and sentence meted by the trial court, rightly preferred this application for extension of time. Thus, the applicant filed chamber summons comprising substantially one ground, that is, seeking extension of time. The chamber summons was supported by his affidavit having nine (9) paragraphs.

Briefly, the applicant was charged for an offence of assaulting Nathaniel Kalimang'asi with an iron rod on his head, thereby caused him to suffer grievous harm. The trial court on 25/11/2021 found the applicant liable, hence convicted him and subsequently sentenced him to either pay fine of TZS. 300,000/= or serve custodial sentence for the period of two (2) years. The applicant preferred payment of fine. Later on, he realized that he has every right to challenge his conviction and sentence to this court, but unfortunate he was already out of time. Hence this application for extension of time.

On the hearing date of this application, the Republic was represented by learned State Attorney Jamilah Mziray, while the applicant appeared in person.

Being unrepresented, he had limited contribution on his application. He raised one ground that the cause of his delay was due to delay caused by the trial court to furnish him with copies of judgement and proceedings, which would enable him to consider if there was any need to appeal. That he wrote two letters, one dated 10/12/2021 and a reminder letter on 18/3/2022. At last, he was furnished with copies of judgement and proceedings on 21/4/2022. Thus, found him out of time. The two letters are attached with his affidavit. Lastly prayed for extension of time to enable him file notice of appeal and appeal out of time.

In turn, the Republic though did not file counter affidavit, yet Ms. Jamilah Mziray, a learned State Attorney tried to oppose the application by raising a legal issue, that the applicant faulted the law by failure to issue

notice of intention to appeal within ten (10) days as per section 361 (1) (a) of CPA. Therefore, this court should not grant extension of time.

It is known and is now settled in our jurisdiction, that extension of time is purely court's discretion upon being satisfied that, the delay was caused by sufficient reason. Perusing the pleadings, the applicant attached two letters requesting for copies of judgement and proceedings, but the trial court even after being reminded by another letter dated 18/3/2022, yet delayed to do good to the applicant up to 21/4/2022. That delay cannot be caused by the applicant rather was contributed by the trial court.

As it is, the copy of judgement is a right of the parties in dispute. They have every right to receive on the very date when the judgement is delivered or on the following day. Delay from 25/11/2021 to 21/4/2022 is an old court working system. Therefore, the applicant is blameless, thus this reason is sufficient to constitute good reason for extension of time. (See the cases of **Criminal Application No. 2 of 2007 between Manoma Malolela & 2 Others Vs. R**, and in **Criminal Appeal No. 107 of 2006 between Sospeter Lulenga Vs. R**).

This court cannot point fingers to the applicant for such delay, while in fact he was constrained to do anything due to dilatory delay of the trial court to perform its duties timely.

While I am about to conclude on this application, let me point out that, parties to any application or suit, be it criminal or civil acquires *locus standi* upon filing pleadings therein. If the defendant/respondent does not file written statement of Defence or reply or counter affidavit, obvious on the hearing date such party will

lack *locus standi* to address the court. This is the legal position even without referring to any precedent therein.

In respect of this application the Republic, though was represented by a State Attorney, yet failed to file counter affidavit. Thus, lacking locus standi to address the court.

Having so said, I find merits on this application; I accordingly proceed to invoke my discretionary powers to grant extension of time. Thus, the applicant may actualize his intention to appeal to this court by filing his notice of intention to appeal within ten (10) days and file his grounds of appeal within five (5) days after filing his notice of intention to appeal.

Order accordingly.

Dated at Morogoro this 15th July, 2022



P. J. NGWEMBE

JUDGE

15/7/2022

Court: Ruling delivered at Morogoro in Chambers on this 15th day of July, 2022 in the presence of Applicant and Jamilah Mziray State Attorney for the Republic/respondent.



P. J. NGWEMBE

JUDGE

15/7/2022