

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MWANZA

AT MWANZA

MISC. CRIMINAL APPL. NO. 25 OF 2022

(Originating from Criminal Case No. 56 of 2020 from Sengerema District Court at Sengerema)

MWITA S/O MARWA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

R U L I N G

18th & 19th July, 2022

DYANSOBERA, J.:

The applicant Mwita s/o Marwa was convicted by the District Court of Sengerema of an offence of obtaining money by false pretenses. He was sentenced *in absentia* to one year term of imprisonment.

It is averred under paragraph 6 of his sworn affidavit that on 15th April, 2021 he was incarcerated in Kasunganile prison. On 16th April, 2021 he wrote a notice of intention of appeal but was later told by a prison officer that such notice could not be traced in his file.

It the applicant's further argument under paragraph 9 of the said affidavit that as soon as he was transferred to Butimba prison, he successfully made this application seeking extension of time in which to file his notice of intention to appeal. it is his argument that the delay was beyond his control.

On 18th day of July, 2022 when this application was called for hearing, the applicant appeared in person whereas the respondent was represented by the learned Senior State Attorney, Ms Margareth Mwaseba.

When he was invited to argue his application, the applicant adopted his supporting affidavit filed on 26th day of May, 2022 and reiterated his prayers in his chamber summons.

On her part, the learned Senior State Attorney informed the court that after going through the affidavit of the applicant, the Republic was satisfied that the ground for the delay adduced by the applicant is sufficient to warrant this court grant the extension particularly where it is clear that the appellant's right of appeal is both constitutional and legal.

Having considered the chamber summons and the supporting affidavit filed by the applicant and after taking into account that the applicant is a convict prisoner and his freedom is, to some extent, restricted, I also find, as is the learned senior State Attorney, the application meritorious.

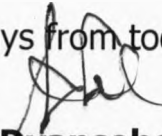
There is no doubt that granting or refusing to grant extension of time is within the court's discretion. As to how such discretion has to be applied, the defunct East Africa Court of Appeal in the case of **African Airlines International Ltd v. Eastern and Southern African Trade**

Development Bank [2003] 1EA 1 (CAK) made the following pertinent observation:-

'In an application for extension of time, the discretion which falls to be exercised is unfettered and should be exercised flexibly with regard to the facts of the particular case.

I am in no doubt that the reason stated by the applicant was beyond his control. Refusing to grant the extension of time would, in my view, deny the applicant of the opportunity of presenting his petition of appeal and advancing grounds as to why he is feeling to have not been satisfied by the trial court's judgment and this might lead to a denial of justice.

The application is, accordingly allowed. The extension of time is granted to the applicant to file his notice of intention to appeal. He should file the notice within ten (10) days from today.


W.P. Dyansobera
Judge
19.7.2022

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 19th day of July, 2022 in the presence of the applicant and Mr. Deogratias Richard Rumanyika learned State Attorney for the Respondent.




W.P. Dyansobera
Judge