

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA**

MISC. CRIMINAL APPLICATION NO. 16 OF 2022

*(Originated from Criminal Case No. 118 of 2022 at Kiwira Primary Court
and Criminal Appeal No. 10 of 2020 at the District Court of Rungwe at
Tukuyu)*

ELIA MWATEBELE.....APPLICANT

VERSUS

SUBI PATRICK MWABONEKE.....RESPONDENT

RULING

Date of Last Order: 01.08.2022

Date of Ruling: 05.08.2022

Ebrahim, J.

The applicant Elia Mwatebele had once timely filed in this court Criminal Revision No. 2 of 2021. However, on 21.03.2022 when the case was called for necessary orders, he prayed to be allowed to withdraw the application for revision with leave to re-file so that he can instead file an appeal. The Respondent had no objection and the court granted the prayer. Seeing that time limitation has captured up with him to file the appeal, he preferred the instant application for extension of time to file an appeal against the decision of the District Court of Rungwe at Tukuyu. The application is filed under **section 25(1)(b) of the**

Magistrates' Courts Act, Cap 11 RE 2019 and it is supported by the affidavit sworn by the applicant himself.

Going by the averments in the applicant affidavit particularly at para 5, he attributed the delay to the time when he had to withdraw the revision and be required to file an appeal instead.

In his counter affidavit, the respondent opposed the application on the reason that the applicant has not accounted for the period of delay and that it was his own doing of filing revision instead of appeal. He was adamant that the delay cannot be termed as technical delay because it was intentionally caused by the applicant.

When the application was called for hearing, both parties appeared in person, unrepresented.

Submitting in support of his application he argued that the first case was struck out hence the delay and the instant application to file the appeal.

In response, the respondent contended that the delay was caused by the applicant himself as he filed the revision instead of appeal. He contended therefore that the applicant has not established sufficient reasons to warrant the order of extension of time. Thus, the application be dismissed.

I have carefully followed the submissions made by the parties. Verily, going by the affidavit of the applicant as well as the sequence of events depicting in the record, it is true that the applicant had initially timely filed a revision which he later came to realize that it was a wrong cause. In essence, as stated earlier, the delay is attributed to technical delay.

The principle "**technical delay**" was described in the case of **Furtunatus Masha vs, William Shija and Another** [1997] TLR 154, in the following words:

"... A distinction should be made between cases involving real or actual delays and those like the present on which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted."

Thus, in law a technical delay is excusable in opportune circumstances and constitutes a sufficient reason for granting the extension of time. The principle of technical delay applies where the previously struck out matter had been filed timely nonetheless, is subject to the fact that, the affected party/applicant promptly moves the court upon the striking out order being made- **Elly Peter Sanya v. Ester Nelson**, Civil Appeal No. 151 of 2018 CAT at Mbeya (unreported). In application at hand, it is undisputed that the applicant had previously

filed the appeal at the prescribed time. It is also undisputed that the same was withdrawn with leave to refile on 21st March 2022 after realization that the applicant ought to have filed an appeal instead of revision. Notwithstanding the above facts, the applicant managed to file the present application on 08th April 2022 over two weeks from the date of withdrawn application. This shows that the applicant still intends to challenge the decision of the District Court. In my settled estimation, the trend by the applicant as shown above justifies the application of the principle of technical delay. It is also my considered view that, at times, the court can consider the overall circumstance of the matter and broad sense of justice in exercising its judicial discretion to extend time.

In that regard, I hereby grant the application. The applicant is availed 30 days (thirty days) from the date of this ruling to file the intended appeal. Costs shall be in the main cause.

Ordered accordingly.




R.A. Ebrahim
JUDGE

Date: 05.08.2022.

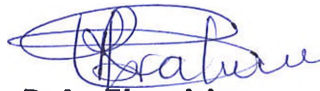
Coram: Hon. R.A. Ebrahim, J.

Applicant: Present in person.

Respondent: Present in person.

B/C: Gaudensia.

Court: Ruling is delivered today in chambers in the presence of both parties.



R.A. Ebrahim

Judge

05.08.2022