

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

MISC.CRIMINAL APPLICATION NO. 24 OF 2022

*(Originating from Criminal case No. 74 of 2019 in the Resident Magistrate Court of
Morogoro)*

MOHAMED SAID NYENJE..... APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

Hearing date on: 18/8/2022

Ruling date on: 22/8/2022

NGWEMBE, J:

The applicant in this application seeks extension of time under certificate of urgency, within which, he may file petition of appeal out of time. He intends to challenge the Judgement of the Resident Magistrate Court of Morogoro dated 24/03/2022. He was convicted and sentenced to serve custodial sentence for the period of twenty (20) years.

Briefly, this application, originates from a charge sheet preferred against the applicant alleged to have been found in possession of Government Trophy to wit; two elephant tusks contrary to section 86 (1)

(b) and (3) of the Wildlife Conservation Act as amended and other laws related to economic offences. Being so charged, he was arraigned in court, convicted and sentenced to the statutory imprisonment of twenty (20) years.

Though he was aggrieved with that conviction and sentence, yet found himself out of time to appeal within the prescribed time frame. Thus, this application for extension of time.

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

Being unrepresented, he had no useful contribution on his application. In turn the Republic through Mr. Bantulaki, outright blessed the application for extension of time. Rather prayed this court to find, if possible, to grant the requested extension of time.

In brief, the reasons for delay are contained in the affidavit affirmed by the applicant, specifically in paragraphs, 3, 5 & 6 whereby the applicant advanced the reasons for delay being under custody and he used his relative to prepare and lodge the appeal within time, but alas they delayed to actualize his intention.

That notice of intention to appeal was filed within the prescribed ten (10) days and he was supplied with judgement and proceedings within time but entrusted his relatives to file the appeal timeously but failed. Thus, found himself out 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 cause. The applicant did not attach any document in his application, that is neither copy of judgement nor proceedings, thus causing this court lack advantage to know exactly when the impugned judgement was delivered in court.

It is undisputed fact that the applicant was in jail, where freedom of movement is curtailed. He could not move to the court to file his petition of appeal. This position has been observed in many cases of similar nature including the decision made by lady justice Kimaro in **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**, in both cases the Court of Appeal held:-

"Having so expressed his intention to appeal, the appellant left the matter in the hands of the prison officer who was duty bound to transmit the Notice of Appeal to the High Court. The default of the prison officer to forward the Notice of Appeal to the High Court is sufficient ground for extending the period of appeal"

This court cannot point fingers to the applicant for such delay, while in fact he was constrained to move and exercise his rights of appeal. In this application, it is clear that the applicant is imprisoned and he signified his intention to appeal within time when he filed



notice of intention to appeal. But his relatives, unfortunate delayed to act within time.

At the end I find merits to this application, 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 petition of appeal within twenty (20) days from the date of this ruling.

Order accordingly.

Dated at Morogoro this 22nd August, 2022



P. J. NGWEMBE

JUDGE

22/8/2022

Court: Ruling delivered at Morogoro in Chambers on this 22nd day of August, 2022 in the presence of the Applicant and Edgar Bantulaki State Attorney for the Republic/respondent.



P. J. NGWEMBE

JUDGE

22/8/2022