

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA DISTRICT REGISTRY

AT SONGEA

MISCELLANEOUS CRIMINAL APPLICATION NO. 23 OF 2022

(Originating from Criminal Case No. 63 of 2022 Tunduru District Court at Tunduru)

THABIT SAID @ JUMA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of last Order: 10/08/2022
Date of Ruling: 05/10/2022

MLYAMBINA, J.

The Applicant herein filed this application seeking for an extension of time to file the notice of appeal out of time prescribed by the law. The application was made under the provision of *section 361 (1) (a) and (b), (2) of the Criminal Procedure Act [Cap 20 Revised Edition 2022]*, and supported with an affidavit sworn by the Applicant. On the other hand, the Prosecution contested the application by filing the counter affidavit.

During the hearing, Ms Tumaini Ngiluka learned Senior State Attorney appeared for the Respondent while the Applicant appeared in person. The application was heard orally. While submitting, the Applicant told this Court that; the impugned decision was delivered on 14th April, 2022. Immediately, the Applicant declared his intention to

appeal orally. The Appellant averred further that; the Prison Admission Department of Tunduru Prison did not assist him in the appeal process. That is the reason for his delay.

In reply, Ms Ngiluka opposed the application on the ground that, the Applicant did not submit any proof that the Prisoner Officers are the reason for his delay. The Applicant was supposed to bring an affidavit from the Prison Officer to prove his delay. Ms Ngiluka prayed the application to be dismissed.

In his rejoinder, the Applicant had nothing substantial to add.

In the light of the foregoing, this Court had time to go through the application and submission from both sides. The issue to be determined is; *whether the Applicant adduced sufficient reason to move this Court to use its discretion power to grant him an extension of time to file his notice of intention to appeal out of the time prescribed by the law.*

Notice of Appeal is a document which institute an appeal. An appeal without a Notice of Appeal is like no appeal at all. Requirement of notice of appeal is not Court invention but a legal requirement. *Section 362 (1) (a), (b) and (2) of the Criminal Procedure Act (supra)* prohibit the Court to entertain any appeal which did not preced by a notice of

appeal. For easy reference *section 361 (1) (a), (b) and (2)* provides *inter alia* that:

361.-(1) subject to the subsection (2), an appeal from any finding, sentence or order referred to in section 359 shall not be entertained unless the Appellant-

(a) has given notice of his intention to appeal within ten days, from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and

(b) has lodged his petition of appeal within forty five days from the date of finding, sentence or order,

Save that in computing the period of forty five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded.

(2) the high Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.

Being guided by the aforementioned provision of the law, it is literally understood that a Notice of Appeal is an inevitable document to any person who wishes to appeal against not only sentence but also orders and the judgement as a whole.

It is the discretion of the Court to grant or refuse an extension of time to the Applicant. The discretion has to be exercised judiciously. That means, the Applicant has to adduce sufficient reason(s) for his delay. The Court has to take into account some factors when deciding either to grant or to refuse the extension of time. Some of the factors are; cause of the delay, length of the delay, whether or not the Applicant has accounted for each day of delay and degree of prejudice that the Respondent may suffer if the application may be granted an extension and if there is any illegality. This was the position in the case of **Lyamuya Construction Co. Limited v. Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, Court of Appeal of Tanzania at Arusha, the case of **Maulid Swedi v. The Republic**, Criminal Application No. 66/11 of 2017 (both unreported) and the case of **Principle Secretary, Ministry of Defence and National Service v. D. P. Valambhia** [1992] TLR 185.

Being guided by the principle provided in the above quoted decisions, paragraph three (3) of the supporting affidavit, the Applicant adduced that the reason for his delay was caused by the failure of the Prisoner Officer to assist him in appeal process. Ms. Tumaini contested

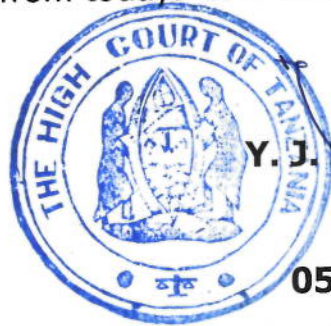
the application on the ground that the Applicant did not provide any evidence to prove his allegation that the Prisoner Officers are the ones who led the delay to file the Notice of Appeal on time.

It is the observation of this Court that after the Accused person being convicted and sentenced to imprisonment, all his right persists but not freely accessible. There are certain requirements and procedure which have to be complied with. The right to appeal is for any person who wish to appeal regardless his where about. But the Prisoner cannot access any of his right without Prison Officers assistance.

Further, Ms. Tumaini did no tell this Court if the Respondent will be prejudiced in any way with the grant of extension. This was the position in the case of **Mobrama Gold Corporation Limited v. Minister for Energy and Minerals and Others** [1998] TLR 425, where the Court has this to say:

It is generally inappropriate to denial a party an extension of time where such denial will stifle his case, as the Respondent delay does not constitute a cause of procedure abuse or contemptuous default and because the Applicant will not suffer any prejudice an extension should be granted. [Emphasis added]

At this juncture, this Court is satisfied with the reason for delay adduced by the Applicant. As a result, the Applicant's prayer is hereby granted. The Applicant has to file his Notice of intention to Appeal within ten (10) days from today. It is so ordered.

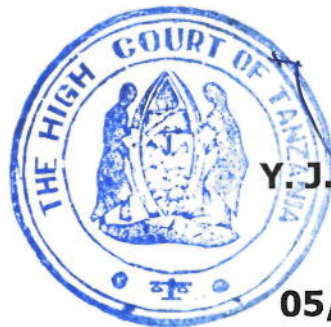


Y. J. MLYAMBINA

JUDGE

05/10/2022

Ruling delivered and dated 5th day of October, 2022 in the presence of the Applicant and learned State Attorney Tumpare Lawrence for the Republic. Right of Appeal fully explained.



Y. J. MLYAMBINA

JUDGE

05/10/2022