

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

MISC.CRIMINAL APPLICATION NO. 21 OF 2022

(Originating from Criminal Case No. 402 of 2009 in the District Court of Morogoro at Morogoro)

MIRAJI SHABANI @ MILO..... APPLICANT
VERSUS
THE REPUBLIC..... RESPONDENT

RULING

Hearing date on: 21/9/2022

Ruling date on: 26/9/2022

NGWEMBE, J:

The applicant in this application has been in the corridors of this court and in the Court of Appeal, seeking justice unsuccessfully. Being so determined, he never surrendered. After all his struggles, at this time he has landed in this house of justice seeking extension of time, so that he may appeal against his conviction and sentence of thirty (30) years imprisonment.



Tracing the genesis of this application, the applicant was arraigned in court charged for armed robbery contrary to section 287A of the Penal Code. Thus, criminal case No. 402 of 2009 was instituted, and at the end he was convicted and sentenced accordingly. Being dissatisfied, he unsuccessfully appealed in this court by instituting criminal appeal No. 28 of 2012. When the appeal came before judge Bongole J. same was unceremoniously dismissed on account of being incompetent for lack of notice of appeal. As he was so determined and tirelessly, he lodged another criminal appeal No. 40 of 2015, unfortunate may be to him, judge Mzuna, J. dismissed it entirety. Dissatisfied on the outcome, he ventured to the Court of Appeal registered as Criminal Appeal No. 500 of 2016. Again on 18/4/2019 his appeal was unceremoniously strike out due to incompetence's based on time limitation from the High Court. Exceedingly, they nullified the proceedings and set aside the judgement of the High Court in Criminal Appeal No. 40 of 2015. Proceeded to advise the appellant to access the High Court in pursuit of his right subject to time limitation.

Based on that decision of the Court of Appeal, in year 2019, at last on 27th May, 2022 instituted this application for extension of time. The reasons disclosed for his delay is in paragraphs 3 to 7 which are narrative of what I have summarized above. In essence, this application if granted the applicant will lodge his appeal to this house of justice against the conviction and sentence meted by the trial court after all judgements and proceedings of this court before judge Mzuna were nullified by the Court of Appeal.



Considering more deeply, the applicant since his conviction and sentenced in year 2009 to date, he has been tirelessly struggling to challenge such conviction and sentence unsuccessfully to date. This may be a reason for the Republic from refraining to object it. The learned State Attorney Emmanuel Kahigi when appeared for hearing, clearly refrained to object the application and prayed this court to consider his application and grant it. Rightly so, to appeal from one court to another within the hierarchy is one of the basic principles of natural justice reserved in our constitution. However, such right is subject to strict observance of time limitation. Time limitation is fundamental in disposition of disputes. Therefore, even if one has a fundamental right to appeal, yet such right may be hindered by none observance of time limitation.

The legislature had a purpose in enacting the Law of Limitation Act Cap 89 R.E 2019 and other statutes which provide time limitation. Logically, time limitation in any action in the court of law is a material fact in every adjudication of disputes, be it criminal or civil. The Court of Appeal in the case of **Night Support (T) LTD Vs. Benedict Komba, Revision No. 254 of 2008** held: -

"Limitation is material point in the speedily administration of justice. Limitation is there to ensure that a party does not come to court as when he chooses".

In similar vein, the Court of Appeal repeated in the case of **Henry Muyaga Vs. TTCL, Application No. 8 of 2011**, held: -

"The discretion of the Court to extend time under rule 10 is unfettered, but it has also been held that, in considering an

*application under the rule, the courts may take into consideration, such factors as, the **length of delay**, the **reason for the delay**, the **chance of success of the intended appeal**, and **the degree of prejudice** that the applicant may suffer if the application is not granted” (Emphasis in mine).*

Without overemphasizing, time limitation is a material fact, which must strictly be complied with. When delay is caused by good cause or illegality of the impugned judgement is observed, extension of time may be granted. In fact, extension of time is purely discretionary powers of the court subject to satisfactory reasons for that delay.

In respect to this application, the applicant is seeking extension of time to lodge both notice of appeal and appeal against the trial court’s judgement. Due to what I have narrated above, the applicant since 2009 to date is in jail where freedom of movement is limited. Also, he has been struggling all along to appeal against his conviction and sentence, but his appeal was encountered by incompetence, hence failed to be heard substantively, then I find he should be given second chance of being heard.

In such circumstances, I find justice demand this application should be granted to let him actualize his intention to lodge notice of appeal and appeal against the trial court’s judgement. Accordingly, I hereby grant him ten (10) days from the date of this ruling to issue his notice of intention to appeal and lodge his petition of appeal within ten (10) days from the last day of issuing his notice of appeal.



Order accordingly.

Dated at Morogoro this 26th September, 2022



P. J. NGWEMBE

JUDGE

26/09/2022

Court: Ruling delivered at Morogoro in Chambers on this 26th day of September, 2022 **Before Hon. J.B. Manyama, AG/DR** in the presence of the Applicant and in the presence of Theodora Mlelwa Learned State Attorney for the Respondent.

SGD: HON. J.B. MANYAMA
AG/DEPUTY REGISTRAR

26/09/2022

