

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISC. CRIMINAL APPLICATION NO. 38 of 2022**

*(Originating from Lindi District Court in Economic Case No. 3/2021)*

**SOFIA HAMIS NAMBEA.....1<sup>ST</sup> APPLICANT**

**ALI ABDU ALI .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**THE REPUBLIC .....RESPONDENT**

**RULING**

**Muruke, J.**

The two applicants, Sophia Hamis Nambea and Ali Abdu Ali, were charged at the district court of Lindi at Lindi for an offences of stealing and occasioning loss to a specified Authority, namely Mnazi Mmoja Amcos. They were tried and finally convicted, and sentenced to pay fine of 500,000 each and on default to serve 12 months' imprisonment on the first count. On the second count to serve 5 years' imprisonment and pay compensation of 7,622,635 Tshs each, on 16<sup>th</sup> May 2022. They have filed an application for extension of time to file appeal. Reason for delay are articulated at paragraph 9,10,11,12 and 15 of their affidavit in support. Respondent filed counter affidavit sworn by Gideon Magesa State Attorney, to refuse contents of applicant's affidavit. On the date set for hearing applicants were represented by Hussein Mtembwa, while Wilbroad Ndunguru, State Attorney, represented respondent. With leave of the court, both counsels requested court to adopt their affidavit for and against to be their submission.



Indeed, looking at paragraph 6,7,8 of applicant affidavit is a narration on how they struggled to get copy of the judgement and proceeds. Paragraph 9,10,11, 12 and 15 explained reasons for delays. Respondent opposed the averments of paragraph 12,13,14,15,16 and 17, insisting that delay for more than a month cannot be excused.

It is settled principle of law of the land that, in application for extension of time the applicant must show that there is sufficient reason/good cause for the delay. This was held in the case of **The International Airline of the United Arab Emirates V. Nasser Nasser, Civil Application No. 569/01 of 2019 CAT** (unreported) that;

*“It is trite law that in an application for extension of time to do a certain act, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time.”*

However, despite that constitutional right, yet to extend time is purely vested to the discretion of the court, which discretion always is exercised judiciously, upon sufficient cause. Indeed, what amount to good cause/sufficient cause is not define, but it is the duty of the court to treat each case depending on its circumstances, as stated in various cases including in the case of **Emmanuel Bilinge Vs. Praxeda Ogwever & Another, Misc. Application No. 168 of 2012** (unreported) stated that;

*“What constitutes reasonable or sufficient cause has not been defined under the section because that being a matter for the court’s discretion cannot be laid down by any hard and fast rules but to be determined by reference to all the circumstances of each case.”*





Similar principle was stated in the case of **Regional Manager Tanroads Kagera Vs. Ruaha Concrete Co Ltd, Civil Application No. 96 of 2007**, where the Court observed the following:

*“What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means **the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules**” (emphasis supplied).*

In the case of **Zaida Baraka & 2 Others Vs. Exim Bank (T) Limited, Misc. Commercial Cause No. 300 of 2015** (unreported), when quoted the principle developed in the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of Young Women’s Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported) the Court stated that;

*“As a matter of general principle, it is the discretion of the court to grant extension of time. But that, discretion is judicial and so it must be exercised according to the rules of reason and justice and not according to private opinion or arbitrarily.”*

Affidavit being sworn evidence, need to be countered by an evidence to refute. There is nothing in respondent’s counter affidavit refusing serious issues of delay to be supplied with copy of judgement and proceedings.

What applicant is requesting before this court is right to be heard on an intended appeal. The right to be heard is safeguarded in the constitution. Article 13(6) (a) of the constitution provides in the Kiswahili version thus;

***“(6) Kwa madhumini ya kuhakikisha usawa mbele ya sheria, mamlaka ya nchi itaweka taratibu zinazofaa au zinazo zingatia misingi kwamba;”***

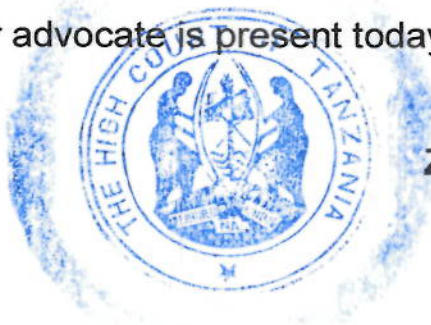


***“(a) Wakati wa haki na wajibu wa mtu yeyote vinahitajika kufanyiwa uamuzi wa mahakama au chombo kingine kinacho husika, basi mtu huyo atakuwa na haki ya kukata rufaa au kupata nafuu nyingine ya sheria kutokana na maamuzi ya mahakama au chombo hicho kinginecho kinachohusika.”***

Court of Appeal in the case of **Mobrama Gold Corportion Ltd Vs. Minister for Energy and Mineral, and East African Goldmines Ltd as Intervor [1998] TLR 245**, observed that;

*“It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents’ delay does not constitute a case of procedural abuse or contemptuous default and because the respondent will not suffer any prejudice, if extension sought is granted.”*

In totality sufficient cause has been explained by the applicants in their joint affidavit. Thus, application granted. Intended appeal to be filed with 30 days from the date copy of ruling received, as neither applicants nor their advocate is present today.



  
**Z. G. Muruke**

**Judge**

**19/08/2022**

Ruling delivered in the presence of Wilbroad Ndunguru State Attorney and in the absence of applicants/their advocate.



  
**Z. G. Muruke**

**Judge**

**19/08/2022**