

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. CRIMINAL APPLICATION NO. 67 OF 2022

*(Originating from the Criminal Appeal No. 131 of 2021 of the High court of Tanzania
at Mbeya)*

Between

FURAH LANGSON MWAMPASHI APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of last order: 25th October, 2022

Date of ruling: 26th October, 2022

NGUNYALE, J.

By way of chamber summons made under section 11(1) of the Appellate Jurisdiction Act [Cap 141 R: E 2019], the applicant applies for extension of time in Criminal Appeal No. 131 of 2021 for giving notice of appeal and filing memorandum of appeal to the Court of Appeal. The application is supported by an affidavit deposed the applicant, it is noteworthy that the respondent elected to file no counter affidavit in reply which essentially implies that the averments in the supporting affidavit are uncontested.



When the application was called on for hearing the applicant appeared in person unrepresented whereas the respondent Republic was represented by Rosemary Mgenyi, learned State Attorney. She raised two points of law to which she was allowed by the law in case she do not contest the averments in the affidavit.

1. There was wrong citation of the enabling law

2. That the verification clause of the applicant's affidavit was defective.

In the first point he submitted that section 11(1) of the AJA does not give powers to the court to extend time.

In the second point she submitted that the averment in the affidavit did not all come from the applicant. She cited the case of **Jamal S. mkumbe & Another vs Attorney General**, Civil Application No. 140 of 2019. To support the argument. she finalized that in absence of proper verification the affidavit cannot be acted upon as evidence.

The applicant being a lay person had nothing to reply on the issues raised. He prayed the court just to grant him time to proceed to the court of appeal to seek his rights.

I have considered the submission by the learned state attorney. Starting with the first point, at the outset the point is misconceived. Section 11(1) of the AJA which has been cited by the applicant in his chamber summons provides that;



'11-(l) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.'

From the above it is clear that the High Court has power to extend time for giving notice of intention to appeal, making application for leave to appeal or for a certificate of point of law. In this application the applicant wants the court to extend time for giving notice of intention to appeal to the Court of Appeal against the judgment of the High Court which is properly within its mandate. For sake of argument taking the State Attorney to be right, though not it was curable under the proviso to rule 48(1) of the Court of Appeal Rule which provides that where an application omits to cite any specific provision of the law or cites a wrong provision but the jurisdiction to grant the order sought exists, the irregularity or omission can be ignored and the Court may order that the correct law be inserted. Therefore, the first point is rejected.

Regarding the second point, the State Attorney did not specify which paragraph in the affidavit were not within the knowledge of the applicant, she just gave general submission challenging the same. This was not proper, as the officer of the court she was required to cite specific

paragraphs in the affidavit which was not within the knowledge of the applicant. Be that it may, I have gone through the affidavit of the applicant and found all the averment to be within the knowledge of the applicant as such the verification clause is properly verified. From the affidavit no averment came from the third party. To that end the second point is also overruled.

Coming to the main application which is uncontested, the applicant just prayed the application to be granted. I have considered the application, reasons for extension of time is contained under paragraph 3 through 6 of the applicant's affidavit;

3. THAT- my appeal was heard on the 26/07/2022 and was the day of delivering such judgment but me as un educated prisoner I failed totally to know its registered number and I waited for the high court order enabling me to find the registered number of my appeal.

4. THAT- as I stated earlier in ground no 4 I waited for the court to supply me with the judgment and order in order to prepared notice of appeal to the court of appeal of Tanzania without any success.

5. THAT- as I did not know the number of my appeal when the court supplied me with the high court judgment on the 31/08/2022 through the prison authority of Ruanda central prison the time of filing such notice of appeal is already elapsed.

6. THAT- the fault which resulted failure of filing notice of appeal in time is beyond my control as even the name of hon. judge who delivered such judgment is unknown to me while the hearing of my appeal.

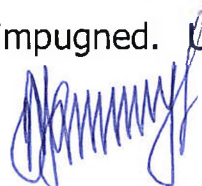
It is the law that for the court to exercise its discretion to extend time the applicant must have advanced good reasons. What constitute good



reasons has not been defined by the law, it all depends on circumstance of the case. see the case of **Renatus Muhanje vs Republic**, Criminal Appeal No. 417 of 2016. I have given due consideration of the reason advanced in the affidavit that, he did not know case number of his appeal and was not supplied with copies of judgment in time. By the time he was supplied with those documents time to lodge notice of appeal had already elapsed. Considering that the applicant is in prison, not a free agent thus could not have been expected to do anything more than what he did. Everything depends on assistance of the prison admission officers.

The fact that he has deposed that he got the requisite document on 31/8/2022 which now enabled him to know his case number, the averment not being controverted by a counter-affidavit from the respondent it remains to be the truth.

From the foregoing, I am satisfied that the reasons for the delay as put forward by the applicant in support of his application constitute sufficient reasons, the application is allowed. The applicant through the prison authorities, should give the notice of his intention to appeal within ten (10) days from the date of the delivery of this ruling. Furthermore, through the prison officers if the applicant is not in possession of proceedings and judgment, should request for a copy of the proceedings and the judgment sought to be impugned. Upon receipt of the



proceedings and judgment, thereafter should lodge the appeal within forty-five (45) days from the date he receives the documents.

DATED at MBEYA this 26th day of October, 2022




D.P. Ngunyale
Judge