

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 5 OF 2021

(C/O Economic Crimes Case No. 5 of 2018 of the District Court of Nkasi)

(B.B. Nkomola, RM,)

KASIANO S/O KAYANZA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date: 24 & 24/02/2022

Nkwabi, J.:

The applicant is seeking an order of this court for him to file his notice of intention to appeal out of time a decision of the trial court delivered on 5th June 2020. The chamber summons is brought under section 361 of the Criminal Procedure Act, Cap 20 R.E. 2019. It is supported by his affidavit and the affidavit of the officer in-charge of prison.

In the supporting affidavit the applicant is advancing reasons that he delayed as he had no money to get legal advice from a lawyer, and when he found time had lapsed he decided to get assistance from the officer in-charge of the prison. He got the assistance but this time, time for filing the notice had

already lapsed. He also averred that the delay was out of his control regard being had to his age and he spent some time getting treatment.

The prisoner officer in-charge of Kitete Prison in Nkasi District certified in an affidavit that indeed, the applicant was waiting for the legal advice from a lawyer, thus the delay.

The respondent was served but did not file a counter affidavit. During the hearing which was conducted orally, the Respondent was represented by Ms. Marietha Maguta, learned State Attorney while the applicant appeared in person, unrepresented. Ms. Maguta Resisted the application though in submissions as no affidavit in reply to the application was filed.

In submission in chief, the applicant prayed this court to assist him as he does not know the law. He had also no rejoinder after Ms. Maguta had prayed for the dismissal of this application.

After considering this application (affidavit) and submissions of both parties, I would like to state the obvious, 'litigation has to come to an end', see

Stephen Masato Wasira v Joseph Sinde Warioba and the Attorney

General [1999] TLR 334. It is to that end that for the court to extend time within which a party to do an act which ought to have been done and time has lapsed then sufficient reason has to be assigned for such order to be issued.

I have considered this application for extension of time within which the applicant to lodge the intended notice of intention to appeal to this court, I am of the firm view that this application must fail. It is trite law that extension of time is a discretionary remedy. Then the applicant ought not to have violated the holding in **Alliance Insurance Corporation Ltd vs Arusha Art Ltd, Civil Application No. 33 of 2015** CAT (unreported):

"Extension of time is a matter for discretion of the Court and that the applicant must put material before the Court which will persuade it to exercise its discretion in favour of an extension of time."

He violated that rule by failure to prove his alleged sickness and age. As such, the applicant has failed to account for each day of the delay which is

contrary to **Bushiri Hassan v Latifa Lukio Mashayo, Civil Application No. 192/20 of 2016** CAT (unreported):

"... Delay of even a single day has to be accounted for otherwise, there would be no point of having rules prescribing periods within which certain steps have to be taken."

Ignorance of the procedure or law cannot come to the assistance of any person, see **Criminal Application No. 1/2016 Ally Kinanda & 2 Others vs The Republic**, CAT At Dodoma where it was stated that:

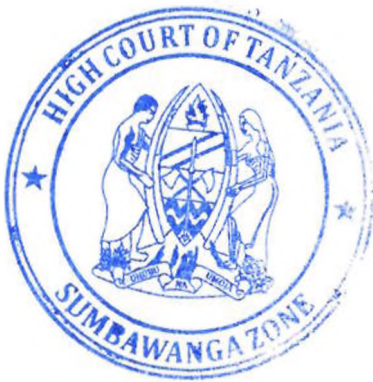
*"As has been held times out of number, ignorance of law has never featured as good cause for extension of time (See for instance, the unreported ARS Criminal Application No. 4 of 2011 **Bariki Israel Vs The Republic**; and MZA Criminal Application No. 3 of 2011 – **Charles Salungi Vs The Republic**). To say the least, a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be appraised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness."*

The applicant's allegation of lack of fund cannot be the basis of extension of time as well.

In fine, I dismiss the application as it is devoid of merits.

It is so ordered.

DATED at SUMBAWANGA this 24th day of February, 2022.



J. F. Nkwabi

Judge