

IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA

MISC. CRIMINAL APPLICATION NO. 36 OF 2021

*(Originating from Criminal Case No. 189 of 2019 In the District Court of
Ruungwa)*

SAIDI AZIZI NAMBUYO.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

Date of hearing: 25/02/2022

Date of Ruling: 25/02/2022

RULING

Muruke, J.

Saidi Azizi Nambuyo filed an application for extension of time within which to file appeal. Same is supported by his own sworn affidavit. Reasons for delay are articulated at paragraph 4,5,6,7,8 and 9 of affidavit. Main complaint by the applicant is that, he being a prisoner with limited means of follow up of the copy of judgment and proceedings is the main reason for delay.

Respondent being represented by Ajuaye Bilishanga learned State Attorney did not object to the application for leave to file appeal out of time, basic on principal of right to be heard.

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;

*Muruke*¹

“(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.”

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. Nassor Nassor, 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

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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).*

The same was repeated in **Tanga Cement and Another, Civil Application No. 6 of 2021**, clearly held that:

"What amounts to sufficient cause has not been define. From decided cases a number of factors has to be taken into account including whether or not the application has been brought promptly, the absence of any or valid explanation for delay; lack of diligence on the part of the applicant."

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;



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“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.”

Applicant has explained in his affidavit that, he received copy of judgment and proceedings in prison through prison authorities. He was shifted from Ruangwa to Lilungu prison. He had limited legal assistance. Thus failure to file his appeal on time was beyond his control, as stated in paragraph 5,6,7 and 8 of his affidavit, which is good ground for extension of time in the circumstances of this case.

Reasons advanced by the applicant are all sufficient to justify extension sought. Thus, application granted 45 days from today to file intended appeal.



Z. G. Muruke
Z. G. Muruke

Judge

25/02/2022

Ruling delivered in the presence of Ajuaye Bilishanga principal State Attorney for the respondent and applicant in person.



Z. G. Muruke
Z. G. Muruke

Judge

25/02/2022