

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

**MISC. CRIMINAL APPLICATION NO. 42 OF 2021**

*(Originating Case No 87 of 2020 of the District Court of Lindi at Lindi)*

**ALLY S/O MFAUME MALINGULA @KACHA.....APPLICANT**

**VERSUS**

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

Date of Hearing: 21/02/2022

Date of Ruling : 28/02/2022

**RULING**

**Muruke, J.**

Ally s/o Mfaume Malingula @ Kacha, was convicted by the District Court of Lindi for an offence of rape contrary to sections 130(1)(2) and 131(3) of the Penal Code, Cap 16 R.E 2019, thus sentenced to life imprisonment in criminal case No. 87 of 2020. He prepared notice of intention to appeal, but before filing his appeal he noticed that he was out of time, thus present application for extension of time to file appeal.

On the date set for hearing, applicant was in person not represented, while the respondent was represented by Ajuwaye Bilishanga accompanied by Faraja George both learned State Attorney. Applicant requested court to adopt his affidavit as his submission in support of the application. Respondent did not file counter affidavit and did not object the application in the cause of hearing.



Having gone through applicant's affidavit, it is worth insisting that it is a constitutional right to whoever aggrieved to appeal to the superior court. Such right should be accompanied with a right to apply and granted extension of time if the delay was caused by sufficient reason. To deny extension of time, is equal to denying a person the right to exercise his Constitutional right to appeal. 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 has to be exercised judiciously, upon sufficient cause. Indeed, what amount to good cause/sufficient cause is not defined, 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).*

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;

*"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 at paragraphs 5, 6, 7 and 8 that, he received copy of judgment and proceedings of this case on 19<sup>th</sup>

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January, 2021 although they were certified on 3<sup>rd</sup> December, 2020. There after he was transferred from Lindi Central Prison to Lilungu prison in Mtwara. Having arrived at Lilungu prison, he stated to prepare his petition of appeal and submitted to the prison officer, later on, he came to realize that his petition was out of time. Court of Appeal in the case of **Mobrama Gold Corporation 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."*

What applicant is requesting before this court, is extension of time to file appeal for him to be heard. 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."*



In the circumstances explained by the applicant in his affidavit, there is no procedural abuse, more so, respondent will not suffer any prejudice as both will have right to be heard on intended appeal. I am unable to refuse extension sought. Thus, extension of time granted. Applicant to file his appeal within 45 days from today, and serve respondent accordingly.



A handwritten signature in blue ink, appearing to read "Z. G. Muruke".

**Z. G. Muruke**

**Judge**

**28/02/2022.**

Ruling delivered in the presence of Ajuaye Bilishanga, State Attorney for the Respondent and in absence of applicant.



A handwritten signature in blue ink, appearing to read "Z. G. Muruke".

**Z. G. Muruke**

**Judge**

**28/02/2022.**