

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SONGEA DISTRICT REGISTRY)**

**AT SONGEA**

**MISC. CRIMINAL APPLICATION NO. 43 OF 2021**

**(Originating from the District Court of Songea in Criminal Case No.103 of 2021)**

**ALANUS MVULA.....APPLICANT**

**VERSUS**

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

**RULING**

04.04.2022 & 25.04.2022

**U. E. Madeha, J.**

This is an application for an extension of time made by way of Chamber Summons under section 361 (2) of the Criminal Procedure Act (Cap 20, R.E. 2019). The Applicant prays for an extension of time to file the notice of intention to appeal and appeal out of time.

During the hearing of the application, the applicants appeared in person, whereas, the respondent was represented by Ms. Generoza Montana; the learned State attorney.

The Applicant submitted that, there was a delay in the court in providing him with the copies of the judgment and the proceedings of his case, but he

had filed the notice of intention to appeal within the located time. Therefore, he requested the court to extend time so that he could file the notice of intention to appeal and appeal out of time.

When called to argue this application on behalf of the Republic/Respondent Ms. Generosa Montana State Attorney rejected the Applicant's application and that the Applicant had not provided any genuine reasons for him to be given an opportunity to appeal out of time. She added that, the Applicant lied to the court by saying that he had filed the notice of intention to appeal on time. That, it seems that the affidavit had failed to state any genuine reasons for the court to extend his appeal period.

In relation to the issue of late receipt of copies of proceedings and judgment, she contended that the Applicant had refused to provide reasons for the appeal out of time. According to her, reference was made to the case of **Athumani Mtundunya v. the District Crimes Officer Ruangwa, the Regional Crime Officer Lindi, and the Attorney General's Chambers**, Civil Application No. I of 2018 CAT Mtwara (unreported). Which was stated that: -

*"Delay, of even a single day, has to be accounted for otherwise there will be no point of having rules prescribing period within which certain steps have to be taken. Those who come to courts of law must not show unnecessary delay in doing so; they must show great diligence."*

In his brief rejoinder submission, the Applicant prayed to the Court to help him as it was the first time, he had lodged an application, and it is a fact that he had been in the prison since June 2021 when he was convicted for the first time.

I have perused the relevant case record, Criminal Case No. 103 of 2020 and found that the judgment was read on 22<sup>nd</sup>, June 2021, and the Applicant was supplied with copies of the judgment and proceeding on 22<sup>nd</sup>, June 2022 that is on the same date the judgment was read.

I have also gone through the lower court records to see if the Applicant filed the notice of intention to appeal to the subordinate court. I flipped through the entire file and found that there was no notice of intention to appeal because the sub-ordinate court case record showed that there was no notice of intention to file an appeal. Had it been that he had filed the



notice of intention to appeal, it would be the evidence which is available in the case records.

Moreover, the notice of intention to file an appeal is not seen in the case records of the sub-ordinate court. The law requires the Applicant to file the notice of intention to appeal within ten (10) days from the conviction. The Applicant did not do but has submitted an application for an extension of time to file a notice and lodge the appeal.

In addition, the judgment was read on the 22<sup>nd</sup>, day of June 2021. He requested this prayer for an extension of time to appeal and filed the notice of intention to appeal on 23<sup>rd</sup>, December 2012. As far as the prayer for an extension is concerned six (06) good months had passed that is from 22<sup>nd</sup> June 2021 to 23<sup>rd</sup> to December 2021 and there has been no notice of intention to appeal. The Applicant has filed the notice of intention to appeal after six (06) good months. Following this trend, the Applicant has not indicated any genuine reason as to why he has been delayed for six (06) good months in bringing notice of intention to appeal and filing the appeal.

Although it is true that, he filed an application for an extension of time to appeal on 23<sup>rd</sup>, December 2021. The appellant was late in filing the notice

of intention to appeal for six months, contrary to Section 361 (1) (a) of the *Criminal Procedure Act Cap 20 (R.E. 2019)*, which states that: -

*"361.- (1) Subject to subsection (2), no appeal from any finding, sentence or order referred to in section 359 shall be entertained unless the appellant (a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence;"*

Thus, the lodging of the notice of intention to appeal does not require a copy of the proceeding and judgment to be provided. It is also the court's responsibility to provide copies of the proceedings and judgment in order to allow the person to prepare the memorandum of appeal.

In terms of *Section 361(2) of Criminal Procedure Act Cap 20 R.E. 2019*, this Court has Discretionary power to extend time in favour of the applicant who adduced good cause for the delay, therefore, the issue for consideration is whether the applicant has shown good cause to enable this Court to reverse its discretionary powers to grant the extension of time to lodge the notice of appeal.

Looking through the Applicant's affidavit, he elaborated that; the delay to lodge notice of appeal and grounds of appeal was due to the reasons which were beyond his capacity and ability since he was a prisoner.

Also, having heard from both sides, I had to go back and perusal of the court's record to see whether I could grant to the Applicant the extension of time. I found that the Applicant was charged and convicted with rape offence contrary to *Section 130 (1) (2) (e) and 131 of the Penal Code Cap 16* of the Law, for the first Count. In the second count, he was also charged and convicted with stealing contrary to section 265 of The Penal Code Cap 16 (R.E. 2019). He was sentenced to serve thirty (30) years in prison for the offence of rape and five (05) years imprisonment for the offence of stealing concurrently.

In my opinion, the appellant has not averred sufficient reasons to apply for the extension of time. The Applicant had a legal responsibility to adduce for significant reasons that led to the delay in filing a notice of intention to appeal but he has failed to do so. In that sense, he has failed to account for the whole period of six months from 22<sup>nd</sup> June 2021 to 23, December 2021, thus warranting this Court to grant him an extension of time to file the notice of intention to appeal out of time.



In the first place, it makes no difference whether he applied for an extension or not if he had sufficient reasons to justify it. The court stresses the significance of judicial discretion in determining the efficacy of granting the extension of time. It is further noted that in order for this discretion to be utilized, the Applicant must demonstrate good and significant reasons for failing to file an appeal at the outset. This could be due to a rule, lack of resources or disease. The Applicant had to prove prima facie, the genuine reasons as to why the appeal should be heard.

I totally concur with the State Attorney that the Applicant has not stated sufficient reasons to warrant the extension of time of lodging the notice of intention to appeal and the extension of time to lodge the appeal. The Applicant has done nothing apart from the bare assertion that he was making a follow-up for copies of judgment and proceedings from the District Court of Songea, Criminal Case No. 103 of 2020. The Applicant alleged that he was not supplied with a copy of the judgment on time; The records show that the judgment was delivered on 22<sup>nd</sup>, June 2021 and the copies were supplied on the same date.

As a matter of fact, there was no account given by the Applicant for each day of delay. It is unclear what the Applicant was doing between the time

he was provided with copies of the judgment and the time this miscellaneous application was filed. Reference is made, to the case of **Blueline Enterprises Ltd v. East African Development Bank** Misc. Civil Course No. 135/95, Katiti J held that: -

*"It is trite law that extension of time must be for the sufficient cause and that extension of time cannot be claimed as of rights, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, upon sufficient cause being shown which has to be objectively asserted by Court."*

Consequently, it was expected that the Applicant will make an account of each day he made a follow-up at the District Court of Songea for copies of judgment and proceedings from Land Appeal No. 1 of 2016. See the case of **Al Imran Investment Ltd Versus Patric Tanzania and Another**, it was stated that;

*"The Applicant ought to explain the delay of every day passes beyond the prescribed periods for the limitation."*

Similarly, there is no account of each day of delay in terms of making follow-up for the said copies of proceedings and judgment from the Songea



District Court in Criminal Case No. 103 of 2020. To sum up, there is no genuine reason provided by the Applicant. Therefore, the application is dismissed. It is so ordered.

**DATED** at **SONGEA** this 25<sup>th</sup> day of **APRIL**, 2022



A handwritten signature in blue ink, appearing to read "U. E. MADEHA", is written over a horizontal dotted line.

**U. E. MADEHA**

**Judge**

**25/04/2022**