

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC.CRIMINAL APPLICATION No. 02 OF 2022

*(Arising from the judgment of the District Court, Criminal Case No.
04 of 2021 of Ukerewe at Ukerewe)*

BERNARD S/O BIGAMBO-----APPLICANT

VERSUS

THE REPUBLIC-----RESPONDENT

RULING

Last Order: 24.02.2022

Ruling Date: 28.02.2022

M. MNYUKWA, J.

The applicant's application is brought by the way of Chamber Summons under Section 361(1) and (2) of the Criminal Procedure Code Cap.20 [RE: 2019]. The order sought is for extension of time to lodge a Petition out of time to appeal before this court. The application is supported by an affidavit deposed by one BERNARD BIGAMBO, the Applicant.



The application was argued by way of oral submission where the applicant appeared in person, unrepresented and the republic had the service of Ms. Magreth Mwaseba State Attorney.

The applicant went straight to the point praying this court to adopt his affidavit and grant his application for extension of time to appeal before this court out of time. He averred that he is not out of time to lodge his appeal for he had an intention and filed the notice of intention to appeal on 09.06.2021 and requested the drawer to accompany it with the memorandum of appeal and he was within time.

Responding to the applicant's submissions, Ms. Magret Mwaseba did acknowledge the applicant's submissions that he had filed an intention to appeal on time as he filed the notice of appeal on 09.06.2021 and the judgment was delivered on 06.06.2021, but she denied the applicant to have filed the appeal within time as claimed.

She insisted that the petition of appeal was prepared on 29.09.2021 and according to the law, citing section 361 of the Criminal Procedure Act, Cap 20 RE: 2019, she avers that, after the judgment is delivered and served to the parties, the aggrieved party is to appeal within 45 days and in the circumstance of the case at hand, from 16.06.2021 to 29.09.2021 the applicant delayed to file his appeal for 59 days.



She went on that; the applicant did not account for each day and failed to advance reasons for his delay and the law requires the applicant to show reasons for delay and account for each day of delay. In the premises, she retires praying the court to strike out the application.

Re-joining, the applicant reiterates his submissions in chief and on top of that, he insisted that he is a layperson and he does not understand English language, he delayed getting a person who could translate for him and prepare his petition of appeal. He went on that, since he is in prison, he expected his mother could find him a lawyer but she felt sick and he got a good samaritan who was once a teacher and prepared his petition of appeal. He therefore, prays this application to be granted.

With care, I proceed to determine the application based on the submissions advanced by both parties. And for the reason that this court has the power to extend time to file an appeal out of time, the same, discretion must be exercised judiciously upon sufficient reasons being shown and objectively assessed by the court. In determination of this application, therefore, the central issue for consideration based on the circumstances, is whether sufficient reasons have been advanced by the applicant to warrant the extension of time to file an appeal out of time as prayed by the applicant.



The phrase 'sufficient reasons' has no constant definition but constantly the court has to take into consideration various factors to hold whether the delay was with sufficient cause, the degree of prejudice, if any party stands to suffer upon courts exercise of its unfettered discretion, the conduct of the party and the need to balance the interest of a party who has a constitutional underpinned right of appeal. For instance, in the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Christian of Tanzania**, Civil Application No. 2 of 2010 (unreported), it was observed that in answering the issue, the Court should be guided by the following factors:

1. *The applicant must account for all the period of delay;*
2. *The delay should not be inordinate;*
3. *The applicant must show diligence and not apathy,*
4. *Negligence or sloppiness of the action that he intends to take. If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged".*

Going to the records, the respondent claim that the applicant did not advance sufficient reasons. I am aware that the court has vibrantly and severally, insisted in various decisions that the grant must be with sufficient reasons. In the case of **Blueline Enterprise Ltd vs. East**



Africa development Bank Misc. Civil Cause No. 135 of 1995, CAT it was held that; -

"...it is trite law that the extension of time must be for sufficient cause and that the extension of time cannot be claimed as of right, 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 assessed by the court..."

See also **Juma Shomari vs Kabwere Mambo**, Civil Application No. 330/17 Of 2020 CAT, **Republic vs. Yona Kaponda & 9 Others** [1985] TLR 84.

Reading the appellant's affidavit, specifically paragraph 2, the applicant claims for lack of resources, and the same, I take in mind that the applicant is an inmate and the affidavit was drawn by the officer-in-charge of prison. I proceed to go through the applicant's submissions who narrated the circumstances underpinned his ability to appeal on time.

First, it is with no doubt that, the applicant intended to pursue his appeal and try to find justice from the day he was convicted and sentenced. This is evident in the records as the applicant filed his notice



of appeal on 09.06.2021 shortly after the judgment was pronounced on 04.06.2021. The applicant contended that, he knew little of the procedure for when filing the notice, he instructed the memorandum to be included. He went on claiming that, he does not know English language, so failed to read the contents of the judgment and was not able to prepare a memorandum of appeal and was waiting for her mother who felt ill till he was assisted by a good samaritan to prepare the memorandum of appeal which is now out of time.

First, it is clear that ignorance of law is not a defence at all be it the reason for the extension of time for it is not a defence in law. So, the applicant's assertion that he is a layperson and did not know the requirement cannot be used as a reason for extension of time. This was stated in the case of **Wambura N. J. Waryuba vs The Minister Secretary Ministry of Finance & The Attorney General** Civil Application No. 320 /01 of 2020 which referred with authority the case of **Emanuel Lohay & Another vs Republic**, Criminal Application No. 03 of 2013 (unreported). The court stated thus: -

"...Ignorance of law is no excuse and cannot amount to sufficient cause for extending time to take a certain step".



Secondly, among other reasons stated by the applicant were that the applicant being the inmate, he lacked resources, he was not conversant with the English language and her mother who could afford her with a lawyer was sick. I proceed to go to the circumstances advanced by the applicant and borrowing the wisdom in the case of **Oswald Mwarabu Mwanzirubi vs Tanzania Fish Processors Ltd** Civil Application No. 13 of 2010, the court of Appeal of Tanzania held that: -

"...what constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is the relative one and is dependable upon the circumstances of each case. It is upon the party seeking the extension of time to provide the relevant material to move the court to exercise its discretion."

I am in accord with the applicant's underpinned circumstances stated as were the reasons for his delay for the reasons that, first, the applicant has at a very early stage after conviction filed a notice of appeal. The act of the applicant expressed his intention to appeal. Second, the applicant being an inmate and under control of the prison institution, it is convincing that the applicant was not able to facilitate his intention to appeal on time. Based on the above authorities,



therefore, I am satisfied that the applicant has advanced sufficient reasons to warrant this court to grant his application. I have also considered the fact that the respondent will not in any way be prejudiced for the grant and taking into consideration that an appeal is not only a statutory right but a constitutional right, of which a person cannot be lightly denied when the higher court is there to determine the applicant's rights.

For the above-stated reasons, I proceed to exercise this court's discretion and extend time for the applicant to file an appeal before this court, and taking into consideration that the applicant is an inmate, he shall file the appeal within 30 days from the date of this Ruling.

Order Accordingly.




M.MNYUKWA
JUDGE
28/02/2022

Ruling delivered in the presence of the applicant and in the absence of the respondent.


M.MNYUKWA
JUDGE
28/02/2022