

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 38 OF 2021

(C/O High Court Criminal Appeal No. 34/2015 originating from Sumbawanga District Court Criminal Case No. 11 of 2012)

PETER S/O KAPUFI @ MBONGOMBONGO APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date: 14 & 15/03/2022

NKWABI, J.:

The applicant is mainly praying for extension of time within which to lodge a notice of intention to appeal to the Court of Appeal out of time. The appeal of the applicant in this court was dismissed on 25/08/2015 for being baseless hence the sentences meted on him by the District Court were confirmed. The District Court of Sumbawanga had sentenced him to 20 years imprisonment and five years imprisonment for burglary and stealing respectively. The sentences were ordered to run concurrently.

The application is preferred under section 11(1) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019. It is supported by the affidavit duly sworn by the applicant as well as that of the Prison officer in-charge.

The unopposed applicant's affidavit is the basis of this application. In it, he avers that his notice of appeal had some irregularities which rendered the appeal incompetent, which irregularities are not his fault. There is also an affidavit duly sworn by the officer in-charge of Sumbawanga prison certifying that it is his office which did not read such notice of appeal which was invalid and that the applicant followed all the procedure correctly but the mistake was done by his office.

At the hearing of this application, the applicant appeared in person while the respondent was duly represented by Ms. Marietha Maguta, learned State Attorney. Meanwhile, the applicant merely prayed his application be granted. The respondent supported the application for reasons that the notice was incompetent hence they do not object the application as it is further reinforced by the affidavit of the officer in-charge of the prison. The applicant had nothing in rejoinder.

Notably, it is trite law that failure to file a counter affidavit is a signification that the application is factually unrefuted, see **Elfazi Nyatega & 3 Others V. Caspin Mining Ltd, Civil Application No. 44/08 of 2017**, CAT Mwanza Oct. 2018:

"As to the reason relating to the death of the applicants' advocate, that fact is not contained in their affidavit and cannot therefore, be considered with a view of finding how it contributed to the delay."

Despite the fact that the respondent does not object the application as the respondent neither filed a counter affidavit, nor made counter argument in oral submissions, the application has to fail.

There is a clear position of the law to the effect that an applicant in an application of this kind has to put before the court materials to enable the court to grant him extension of time to do what ought to be done but that time had lapsed. This is as per **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."

The position ensures that no frivolous applications are granted to the detriment of the vapid law that litigation has to come to an end as held in **Stephen Masato Wasira v Joseph Sinde Warioba and the Attorney General [1999] TLR 334**. In this application, the applicant did not attach the alleged defective notice of appeal and the order of the Court of Appeal which struck out his appeal. In essence, the applicant has failed to account for each day of the delay. In this application, it is not shown when his appeal to the Court of Appeal was struck out. He does not even show the defects he alleges were in the impugned notice of appeal he had filed.

The officer in-charge of the prison, in his affidavit shows that his office could have been slopy in handling the matter, but sloppiness and ignorance of the law have never been good cause for extension of time. See for instance **Ally Kinanda & 2 Others vs. The Republic, Criminal Application No. 1/2016**, CAT, (unreported).

It is for the above reasons that this application is found to have no merits. I dismiss it. It is so ordered.

DATED at **SUMBAWANGA** this 15th day of March 2022.


J. F. NKWABI
JUDGE

