

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

MISC.CRIMINAL APPEAL NO. 03 OF 2022

(Originating from District Court of Mtwara at Mtwara, Criminal Case No. 145 of 2020)

ATHUMANI JUMA SELEMANI@ CHINAAPPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

Date of last order: 23/03/2022

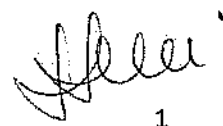
Date of Ruling : 23/03/2022

RULING

Muruke, J.

Athumani Juma Selemani @ China, was convicted by the District Court of Mtwara at Mtwara for an offence of Stealing and receiving and retaining stolen or unlawfully acquired property contrary to section 258 and 265 and 311 of the Penal Code, Cap 16 R.E 2019. Thus, sentenced to serve 4 years. Being dissatisfied, did not file appeal on time, thus present application for extension of time.

On the date set for hearing appellant appeared in person, while respondent represented by Paul G. Makasi Senior State Attorney, who did not object to the application.



Having gone through applicant's affidavit, it is a worth insisting that, it is a constitutional right to whoever aggrieved to appeal to the superior court. Such right should be accompanied with right to apply and granted extension of time if delay was caused by sufficient reason. At paraphs 6 and 7 of applicant's affidavit stated that;

6. that, then after follow up I came to know that my petition of appeal was sent to the High Court out of the limitation of time.

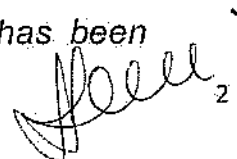
7. that, the failure to file the petition of appeal within the prescribed time was caused by circumstances beyond my control as I received the copies of judgment and proceedings when the prescribed time of 45 days as required by law was expired.

To deny extension of time, is equal to denying a person the right to be exercise constitutional right to appeal. In application for extension of time the applicant must show that there is sufficient reasons/good cause for the delay. This was held in various cases including in the case of **The International Airline of the United Arab Emirates Vs. 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. In the case of **Tanga Cement and Another, Civil Application No. 6 of 2021(unreported)** court 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

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brought promptly, the absence of any or valid explanation for delay; lack of diligence on the part of the applicant.”

What applicant is requesting before this court is extension of time to file appeal for him to be heard. The right to be heard also safeguarded in the constitution. Article 13(6) (a) of the constitution provides in the Kiswahili version thus;

“(6) kwa madhumuni ya kuhakikisha usawa mbele ya sheria, mamlaka ya inchi 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 kinacho husika.”

In the circumstances of this case, and the reasons explained by the applicant in his affidavit, I have no reasons to refuse this application. Thus, extension of time granted. Applicant to file his intended appeal within 45 days from today, and serve respondent accordingly.




Z.G. Muruke

Judge

23/03/2022

Ruling delivered in the presence of appellant in person and Paul G. Makasi State Attorney for the respondent.



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

Z.G. Muruke

Judge

23/03/2022