

**IN THE HIGH COURT OF TANZANIA**

**AT SONGEA**

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

*(Originating from Mbinga District Court Economic Case No. 2/2020)*

**KASPARY GERVAS NDUNGURU..... APPLICANT**

**VERSUS**

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

**RULING**

Date of Last Order: 16/03/2022

Date of Ruling: 21/03/2022

**BEFORE: S. C. MOSHI, J**

The application is made under section 361 (2) (a) of the Criminal Procedure Act, Cap. 20 R.E 2002, I am aware that the 2002 revised edition is superseded by the 2019 edition but there is no miscarriage of justice because the provision of law is substantially the same in both editions. The applicant prays for the following orders and I quote: -

- 1. That Hon. Judge I pray the leave of court to lodge the notice of appeal and appeal out of time.*
- 2. That, Hon. Judge I pray any other order the court may deem fit to grant.*

The application was supported by the affidavit which was sworn by the applicant, Kaspary Gervas Ndunguru. In his affidavit he assigned the reason for delay in paragraph two and three. He averred as quoted hereunder:

- 1. That, I am the applicant in this application of extension of time to lodge notice of appeal and appeal out of time in the high court.*
- 2. That, Hon. Judge I was convicted and sentenced by Mbinga District court and transferred to Songea remand prison.*
- 3. That, Hon. Judge the delayment to lodge notice of appeal was due to reasons which were beyond his control.*

The respondent opposed the application and filed a counter affidavit which was sworn by Ms Generosa Montana, State Attorney where she *inter alia* averred that, the applicant did not disclose the reason for the delay, he said that he delayed due to reasons beyond of his control but he did not state which ones.

At the hearing of the application the applicant appeared in person whereas the Republic was represented by Ms Tulibake Juntwa, senior State Attorney.

The applicant contended that, the delay was due to the fact that he was not supplied with a copy of the proceedings timely, and secondly, he is a prisoner so is under control of prison admission office.

In response thereto, Ms Juntwa argued that, applicant's reasons for delay as advanced in the affidavit as well as in oral submission are not sufficient reasons which can warrant the court to grant extension of time. She said that, there is no requirement to accompany a copy of proceeding when filing a notice of appeal.

She also submitted that, the applicant's affidavit shows that he delayed to file a notice of appeal due to reasons beyond his control, however, he has not explained those reasons which were beyond his control, and that there is no prison's officer affidavit to support applicant's assertions.

She argued further that, furthermore, the applicant did not show the offence of which he was convicted, the date of his imprisonment at Mbinga, and the date when he was brought to Songea.

She prayed that the application be dismissed as it is evident that applicant's move to apply for extension of time is just an afterthought.

The court has discretion to enlarge a time limit which is set by law. However, for the court to exercise its discretionary power to enlarge time limit which is prescribed by law, there must be sufficient reasons to do so. Therefore, the applicant is duty bound to show sufficient grounds, see case of **Lyamuya Construction Company Ltd Versus The Board of Registered Trustees of young Women's Christian Association of Tanzania**, Civil Application no 2/2010, where the court reiterated the following guidelines for the grant of extension of time: -

- 1. That, 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, negligence or sloppiness in the prosecution of the action that he intends to take*
- 4. The court feels that there are other reasons, such as the existence of a point of sufficient importance, such as illegality of the decision sought to be challenged.*

In the application at hand, it is a puzzle as it is practically impossible for me to assess the reasons for delay because the applicant did not reveal the

offence with which he was charged and convicted of. Likewise, he did not state his efforts which were impeded by prison officers; hence were beyond his control. He also did not state the date of conviction, obviously, it is not possible to compute the dates and assess the delay.

Again, the applicant contended orally that he was waiting for a copy of proceeding, however, the law does not set a requirement for a notice of appeal to be accompanied with a notice, see section 361 (1) (a) of the **Criminal Procedure Act**, Cap. 20, R. E 2019. Furthermore, this fact was not stated in the affidavit, hence I find it to be just an afterthought.

In his rejoinder, the applicant said that, he had filed a notice of appeal in time, he now prays for time to bring his appeal. Once again, this is a bit strange, because the application is for extension of time to file a notice of appeal and an appeal. There is nothing in the affidavit which suggests this contention.

All in all, I find that the applicant has failed to assign a good cause for this court to exercise its discretion to enlarge time for lodging a notice of appeal and the appeal.

That said, the application is dismissed accordingly.

Right of Appeal is explained.



  
**S. C. MOSHI**

**JUDGE**

**21/03/2022.**