

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SUMBAWANGA DISTRICT REGISRTY)**

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 21 OF 2021

(C/O Kalambo District Court Criminal Case No. 93 of 2016)

(Mugissa, R.N., SRM)

MNYONGE S/O SIMWINGA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date: 29 & 29/03/2022

NKWABI, J.:

The applicant is praying for extension of time within which to file a notice of intention to appeal to this court out of time. The District Court of Kalambo convicted and sentenced the applicant to thirty years imprisonment for rape offence which is contrary to section 130(1) and (2) (e) read together with section 131(1) of the Penal Code Cap 16 R.E. 2002 which now it is Revised Edition, 2002.

The application is brought under section 361(2) of the Criminal Procedure Act Cap. 20 R.E. 2019. It is supported by the affidavit duly sworn by the applicant as well as that of the Prison officer in-charge.

In the unopposed applicant's affidavit, the applicant attests that the delay in lodging his notice of intention to appeal was due to the delay in being supplied with the copy of the judgment which was out of his control. There is also an affidavit duly sworn by the officer in-charge of Sumbawanga prison certifying what was averred by the applicant.

During the hearing of this application, the applicant appeared in person while the respondent was efficiently represented by Mr. John Kabengula, learned State Attorney. In the course of the hearing, the applicant said that he was imprisoned in an agricultural prison, that caused the delay. He prayed this court to grant his application. Mr. Kabengula for the respondent urged this court to dismiss the application since the delay in being supplied with the copy of the judgment is not a sufficient reason to extend time for lodgement of a notice of intention to appeal.

In rejoinder, the applicant asserted that he had ever filed an appeal in this court but it was struck out as it was not accompanied with a copy of the judgment. He prayed this court to allow his application.

I have considered this application, in my view, the applicant has failed to put to the court material to enable it to enlarge the time he is seeking. This is the judgment or ruling which dismissed or struck out the appeal respectively. 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 trite law that litigation has to come to an end as held in **Stephen Masato Wasira v Joseph Sindi Warioba and the Attorney General [1999] TLR 334.**

Otherwise, the copy of a judgment has nothing to do with his lodging intention of appeal which ought to be filed within 10 days of the delivery of the judgment while a copy of the judgment could be perfectly supplied

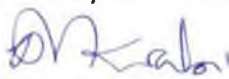
even after those ten days. He has thus failed to advance sufficient reasons for the delay. In other words, the applicant has failed to account for each day of the delay. The affidavit of the officer in-charge of the prison, has nothing in substance to advance the applicant's application.

In the premises this application is devoid of merits. I dismiss it.

It is so ordered.

DATED at **SUMBAWANGA** this 29th day of March 2022.




J. F. NKWABI
JUDGE