

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. CRIMINAL APPLICATION NO. 28 OF 2020**

(From Original Criminal Appeal No. 90 of 2019 at the resident Magistrate Court of Arusha at Arusha with extended Jurisdiction, Originating from Criminal Case No. 5 of 2018, District Court of Babati at Babati)

**THE REPUBLIC .....APPLICANT**

**VERSUS**

**SAFARI MOSSES @ SAMON..... RESPONDENT**

**RULING**

29.03.2022 & 31.03.2022

**N.R. MWASEBA, J.**

The applicant herein moved this court under the provision of section 379 (2) of the Criminal Procedure Act, [Cap 20 R.E 2002] and Section 11 (1) of the Appellate Jurisdiction Act, [Cap. 141], seeking to be granted an extension of time to file notice of appeal to the Court of Appeal and any other orders this Honourable Court may deem fit to grant. The application is supported by an affidavit deposed by Ms. Alice Clement Mtenga, learned state attorney from the National Prosecutions Service.

At the hearing of the application, Ms. Eunice Makala learned state attorney represented the applicant. The matter proceeded *ex-parte* after the efforts of locating the respondent proved futile. With the leave of the court, the appeal was disposed of by way of written submission.

Supporting their application, Ms. Eunice Makala submitted that the applicant was charged and convicted at the district court of Babati at Babati with the offence of rape contrary to section 130 (1) (2) (e) and 131 (1) of the Penal Code, Cap 16 R.E 2002. The respondent was dissatisfied and decided to lodge an appeal to the High Court against both the sentence and the conviction where by the case was transferred to the Resident Magistrate's Court of Arusha with extended Jurisdiction where the appeal was allowed and the respondent was acquitted.

She added that, the applicant was aggrieved by the said decision which was delivered on 8<sup>th</sup> day of November, 2018. She wanted to file notice of intention to appeal to the Court of Appeal, but she was obstructed by the misplacement of the file due to the transfer from one office to another. Further to that, despite of the efforts made to find the said file it was nowhere to be seen until on 5<sup>th</sup> day of April, 2020 when it was found and by that time, the time to file notice of appeal to the court had already lapsed.

Thus, it was their humble submission that application be granted so that they can file notice of intention to appeal to the court of appeal out of the prescribed time.

In the instant application the pertinent issue for determination is whether the applicant has demonstrated good cause to support the application for extension of time to file notice of appeal to the Court of Appeal.

Powers to grant applications for extension of time are vested to the court, such powers are discretionary but need to be exercised judicially which means that before granting prayers for extension of time the court must be satisfied that sufficient cause for the delay has been well established by the applicant.

What amounts to good cause has yet to be defined. However, from decided cases, certain factors provide guidance on whether or not the applicant has shown good cause. Amongst the factors to be taken into account as stated by the Court in the case of **Lyamuya Construction Company Limited Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (Unreported) are: -

*"(a) The applicant must account for all the period for delay;*

*(b) The delay should not be inordinate;*

*(c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*

*(d) 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'.*

Having examined the argument by the applicant along with the supporting affidavit of the applicant, I am of the settled view that the applicant has failed to explain the delay to warrant me to exercise my discretion to grant the same. This is due to the fact that, there is no need to attach any copy of judgment or decision to accompany the notice of appeal. See **Rule 83 (5) of the Tanzania Court of Appeal Rules** which provides:

*"Where it is intended to appeal against a judgment or decision of the High Court, it shall not be necessary for a copy of the judgment or decision to accompany the notice of appeal."*

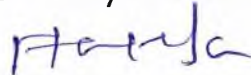
In our present application, the applicants alleged that they were late to file their notice of intention to appeal to the CAT due to the misplacement

of the case file in their office. This court do not support their argument since they could have got the relevant information from the court where there was another file containing the same information needed to be filled in the relevant form (Form B in the First Schedule to these Rules). Thus, misplacement of the file could not bar the applicant from filing a notice of intention to appeal to the Court of appeal within thirty days from the day the appellate court's decision was given.

I therefore hold that the applicant has failed to show sufficient cause for the delay to warrant me to exercise my discretion to extend time as prayed. The application is dismissed with no order as to costs.

Ordered accordingly.

**DATED** at **ARUSHA** this 31<sup>st</sup> day of March, 2022.



**N.R. MWASEBA**

**JUDGE**

**31.03.2022**

