

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISCELLANEOUS CRIMINAL APPLICATION NO. 96 OF 2021

*(Originating from the District Court of Rungwe at Tukuyu Criminal
Case No. 12 of 2018, A. V. Tarimo- RM)*

JEPHET ASULWISYE @ STIMA APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

Date of last order; 28/02/2022

Date of ruling: 11/03/2022

NGUNYALE, J.

The back ground giving rise to this application may simply be narrated as follows; that, on 1st day of November 2018 the trial Court Rungwe DC pronounced judgment in favour of the respondent where by the applicant was convicted and sentenced to serve thirty years imprisonment for the offence of Armed Robbery c/s 287A of the Penal Code Cap 16 R. E 2002 now 2019. The verdict aggrieved the applicant henceforth he preferred an appeal out of time through Misc Criminal Application No. 114 of 2020. The Court (Utamwa, J) on 26th October 2020 granted the application by ordering him to file notice of appeal within ten days and the appeal within forty-five days from the date



thereof against the decision of the trial Court in Criminal Case No. 12 of 2018 before Rungwe District Court.

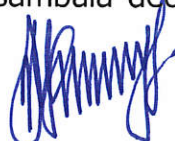
The applicant preferred Criminal Appeal No. 157 of 2020 per petition of appeal filed on 6th November 2020. It seems the applicant had another case before the same trial Court Criminal Case No. 13 of 2018, therefore, in filing Criminal Appeal No. 157 of 2020 he attached judgment and proceedings of Criminal Case No. 13 of 2018 instead of Criminal Cas No.12 of 2018. Erroneously, the Court (Ngunyale, J) entered judgment in Criminal Appeal No. 157 of 2020 against judgment of Criminal Case No. 13 of 2018 instead of Criminal Case No. 12 of 2018.

The applicant is before the Court again seeking the Court to grant extension of time within which to lodge notice of appeal and appeal out of time in respect of Criminal Case No. 12 of 2020 of which he happened to seek extension of time through Misc Criminal Application No. 114 of 2020. The said application was granted and he appealed accordingly as narrated herein above.

In the present application, he filed it under section 361 (2) of Criminal Procedure Act supported by an affidavit dully sworn by the applicant himself. In his affidavit he stated that his first appeal was struck out for incompetence and he is still aggrieved with the sentence imposed. He stated further that appeal is his right he prayed the Court to grant his application and his appeal be heard out of time by lodging both the Notice of Appeal and Petition of Appeal.

On 28th February 2022 when the matter came for hearing the applicant was unrepresented, as a layman he was fairy brief. Politely he said, "*I pray to file an appeal out of time*". Originally, he was given time to file the same but time elapsed. He filed an appeal but the said appeal was erroneous, so it could not take off. He concluded by asking the Court to help him because earlier he made a mistake.

The respondent was ably represented by Ms. Hanarose Kasambala learned State Attorney. From the outset, Ms. Kasambala declared his stance that he



was not supporting an application. She asked the Court to refer to their counter affidavit they had filed, the applicant had not raised any good reason to bolster his prayer. He has not accounted for each day of the delay, he referred the Court to the case of **PATRICK YUNDE KIMU vs. RAJAB MGHENYI**, Civil Application No. 301/03 of 2021 Court of Appeal of Tanzania at Dodoma where the Court dismissed the application because the applicant could not account for each day of the delay. She concluded by inviting the Court to dismiss the application because he has not stated the reasons for the delay.

In a brief rejoinder the applicant again with a polite language said that he filed an appeal which was not considered thus he decided to file again.

Having keenly considered the affidavit by the applicant and the respective submissions he made I have extracted nothing substantial as a reason to support the application. I therefore agree with Ms. Kasambala that the applicant has not raised any sufficient reason in his affidavit for the grant of his application. Be it as it may, the applicant is a layman who could not know how to set his grounds for seeking extension of time. He solely depends from the legal service of the admission officers at the Ruanda Central Prison but they also depend from the information they get from the applicant. The applicant could not address properly what transpired in Criminal Appeal No. 157 of 2020 for it to be part of his affidavit. Judiciously, I am moved to take judicial notice under section 58 and 59 (a) of the Evidence Act Cap 6 R. E 2019 on the orders in Criminal Appeal No. 157 of 2020 where the applicant filed an appeal against the same decision (Criminal Case No. 12 of 2018) but by mistake of fact it was not determined accordingly. The Court considered an appeal against Criminal Case No. 13 of 2018 instead of Criminal Case No. 12 of 2018 against the same applicant. I think it was a reason for the applicant to rejoin by saying that he filed an appeal which was not considered thus he filed again.

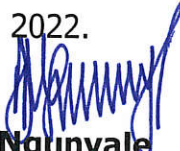
It is my settled view that, the delay of the appellant was because of the fault of this Court which could not determine earlier his appeal. certainly, the Courts



of record several times have ruled that the party cannot be punished for the fault of the Court. A layman who is prosecuting his own case need guidance of the Court in important matters for the interest of justice. In the outset, I am convinced that the applicant deserves a benefit of doubt from the fault of the Court, I therefore exercised judicial discretion to grant the application. The applicant is given **10 days from today to file Notice of Appeal and 45 days** form to day to file an intended appeal out of time.

Dated at Mbeya this 8th day of March 2022.




D. P. Ngunyale
Judge
8th March 2022

Delivered this 8th day of March 2022 in presence of the applicant in person and Mr. Msanga learned State Attorney for the respondent.


D. P. Ngunyale
Judge
8th March 2022