

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

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**MISC. CRIMINAL APPLICATION NO. 3 OF 2022**

(C/O Mlele District Court Economic Crimes Case No. 22 of 2020)

(Ahmed, B.M., RM)

**JOHN S/O AMBROSE @ MWANAMLILO ..... APPLICANT**

**VERSUS**

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

**RULING**

Date: 06 & 11/04/2022

**NKWABI, J.:**

On 7<sup>th</sup> October, 2021 the trial court convicted and sentenced the appellant to 20 years imprisonment for being in unlawful possession of government trophies on three counts. The sentences were ordered to run concurrently. His notice of intention to appeal to this court was lodged in the trial court on 13/10/2021 well within the prescribed time for lodging the notice of appeal.

It appears that the applicant was late to lodge his petition of appeal. On 11/01/2022 he lodged this application for extension of time within which this court may hear his appeal out of time and any other orders this court may deem fit and proper to grant.

The application is brought under section 361 (1) (b) and (2) of the Criminal Procedure Act Cap. 20 R.E. 2019. It is supported by the affidavit sworn by the applicant as well as the affidavit of the Prison officer in-charge of Mpanda prison.

In the unopposed applicant's affidavit, the applicant avers that the delay to lodge his appeal was due to Mpanda remand prison authority who failed to comply with section 361 (1) (b) of the Criminal Procedure Code, Cap. 20 due to computer machine being broken down at the particular time/date.

There is also an affidavit duly sworn by the officer in-charge of Mpanda prison seemingly certifying what was averred by the applicant. He had these to say:

*"That the applicant prepared his appeal out of time because at that time the applicant convicted and according to information, I received is that at that time there was only one computer machine which was broken up so my office failed to comply with section 361 (1) (b) of the CPA Cap. 20 R.E. 2002."*

Meanwhile the hearing of this application was conducted in the presence of the applicant who appeared in person. The respondent was ably represented by Mr. Simon Peres, learned Senior State Attorney. In the course of the hearing, the applicant said that he was sentenced and he was not satisfied with the sentence and conviction. He prayed his application be granted.

In reply submission, Mr. Peres maintained that they object the application since judgment was delivered on 07/11/2021. Then the applicant ought to have lodged a notice of appeal within 10 days as per section 361 of the Criminal Procedure Act. He did not do so until 11/01/2022 when he filed this application. He added, no sufficient ground was advanced by the applicant to justify extension of time. The affidavit of the prison officer in-charge has nothing to justify extension of time, he added. He prayed the application be dismissed as it is an afterthought.

While making his rejoinder, the Applicant urged this court to allow his application as he has intention to appeal.

I have carefully 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. The material I am referring to is the judgment or ruling which

dismissed or struck out the appeal respectively, see **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."*

That above 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 Sinde Warioba and the Attorney General [1999] TLR 334.**

In the circumstances, I am of the view that this application has no any merits. If the applicant's so claimed appeal in this court was dismissed, why he failed to attach it and avail this court with the necessary material to enable it to consider it for the purposes of enlarging the time within which he may file the intended appeal? In the circumstances 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 because it is hearsay evidence. The position was

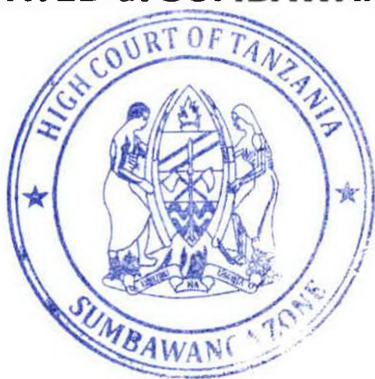
stressed in **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 192/20 of 2016 CAT (unreported) where it was held:

*"... Delay of even a single day has to be accounted for otherwise, there would be no point of having rules prescribing periods within which certain steps have to be taken."*

In fine this application is devoid of merits. It is dismissed.

It is so ordered.

**DATED** at **SUMBAWANGA** this 11<sup>th</sup> day of April 2022.



  
J. F. NKWABI  
**JUDGE**