

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

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**MISC. CRIMINAL APPLICATION NO. 9 OF 2022**

(C/O Mlele District Court Criminal Case No. 157 of 2016)

(Swai, T., RM)

**FESTO S/O JOSEPH ..... APPLICANT**

**VERSUS**

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

**RULING**

Date: 05 & 11/04/2022

**NKWABI, J.:**

The applicant is exhorting this court for extension of time within which to file a notice of intention to appeal to this court and lodge the petition of appeal out of time. The District Court of Mlele convicted and sentenced the applicant to life imprisonment for unnatural offence which is contrary to section 154(1) (a) and (2) of the Penal Code Cap 16 R.E. 2002 which now it is Revised Edition, 2019. The conviction of the appellant was based on his own plea of guilty.

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 avows that he lodged his notice of intention to appeal and petition of appeal to the High Court on time via prison authority. He further averred that failure to lodge a notice of intention to appeal and petition of appeal was not his fault and beyond his control as a prisoner he depended on prison authority to lodge notice of appeal and petition of appeal.

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

- 1. "That the applicant presented his notice of intention to appeal in my office but the office failed to forward to your honourable court because of things which are out of control.*
- 2. That the applicant followed all procedures correctly but the mistake was done by my office.*
- 3. That the applicant was convicted on 14/11/2016 and forwarded notice of intention to appeal on time and prepared his grounds of appeal before 45 days have lapsed as required by the law.*

*4. That I pray to your honourable court to allow the application of the applicant."*

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 hearing, the applicant said that he filed his appeal on time, it was dismissed. He was told to bring an application so that he appeals out of time.

Mr. Peres for the respondent urged this court to dismiss the application because, the claim that he had filed an appeal and was struck out is nowhere to be seen. The claim that he had ever appealed is a new ground. He urged that the appellant was satisfied with the decision. He prayed this application be dismissed.

It was in his rejoinder, the applicant insisted that he had ever filed an appeal in this court but it was dismissed. He prayed this court to allow his application.

I have duly 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. 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. 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 Sinde Warioba and the Attorney General [1999] TLR 334**.

I am of the view that the application has no any merits. If his so claimed appeal in this court was dismissed, 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 he does not mention the things which were out of his control for this court's

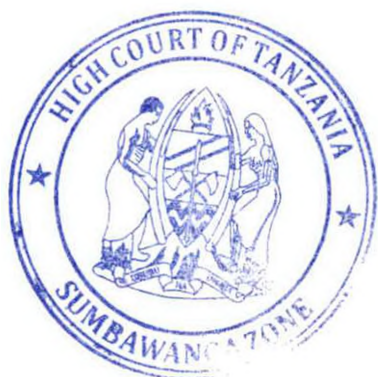
consideration. It is trite law that each day of the delay must be adequately explained, see **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 192/20 of 2016 CAT (unreported) where it was held:


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

It is so ordered.

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



  
**J. F. NKWABI**  
**JUDGE**