

**IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA**

MISC. CRIMINAL APPLICATION NO. 38 OF 2021

*(Originating Case No 111 of 2020 of the District Court of Mtwara at
Mtwara)*

GEORGE MARTIN MAVOCHI..... APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

Date of Hearing: 02/02/2022

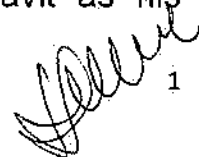
Date of Ruling : 07/02/2022

RULING

Muruke, J.

George Martin Mavochi, was convicted by the District Court of Mtwara at Mtwara for an offence of rape contrary to section 130(1)(2)(e) and 131(1) of The Penal Code, Cap 16 R.E 2002, thus sentenced to serve 30 (thirty) years imprisonment in criminal case No. 111 of 2020. He prepared notice of intention to appeal, but before filing his appeal he noticed that he was out of time, thus present application for extension of time to file appeal.

Respondent filed counter affidavit sworn by Lugano B. Mwasubila, learned State Attorney, to refuse contents of applicant affidavit. In totality learned State Attorney's affidavit objected applicant's affidavit for want of good cause. On the date set for hearing, applicant was in person not represented, thus requested court to adopt his affidavit as his



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submission in support of the application. Respondent counsel on the other hand also had the same prayer.

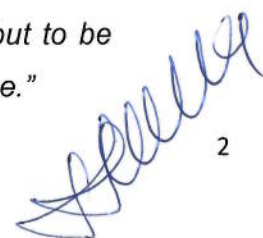
Having gone through affidavits of both applicant and respondent, it is worth insisting that it is a constitutional right to whoever aggrieved to appeal to the superior court. Such right should be accompanied with a right to apply and granted extension of time if the delay was caused by sufficient reason. To deny extension of time, is equal to denying a person the right to exercise his Constitutional right to appeal.

It is settled principle of law of the land that, in application for extension of time the applicant must show that there is sufficient reason/good cause for the delay. This was held in the case of **The International Airline of the United Arab Emirates V. Nassor Nassor, Civil Application No. 569/01 of 2019 CAT** (unreported) that;

"It is trite law that in an application for extension of time to do a certain act, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time."

However, despite that constitutional right, yet to extend time is purely vested to the discretion of the court, which discretion always is exercised judiciously, upon sufficient cause. Indeed, what amount to good cause/sufficient cause is not define but it is the duty of the court to treat each case depending on its circumstances as stated in various cases including in the case of **Emmanuel Bilinge Vs. Praxedo Ogwever & Another, Misc. Application No. 168 of 2012** (unreported) stated that;

"What constitutes reasonable or sufficient cause has not been defined under the section because that being a matter for the court's discretion cannot be laid down by any hard and fast rules but to be determined by reference to all the circumstances of each case."



Similar principle was stated in the case of **Regional Manager Tanroads Kagera Vs. Ruaha Concrete Co Ltd, Civil Application No. 96 of 2007**, where the court observed the following:

*"What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means **the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules**" (emphasis supplied).*

The same was repeated in **Tanga Cement and Another, Civil Application No. 6 of 2021**, clearly held that:

"What amounts to sufficient cause has not been define. From decided cases a number of factors has to be taken into account including whether or not the application has been brought promptly, the absence of any or valid explanation for delay; lack of diligence on the part of the applicant."

In the case of **Zaida Baraka & 2 Others Vs. Exim Bank (T) Limited, Misc. Commercial Cause No. 300 of 2015** (unreported), when quoted the principle developed in the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported) the Court stated that;

"As a matter of general principle, it is the discretion of the court to grant extension of time. But that, discretion is judicial and so it must be exercised according to the rules of reason and justice and not according to private opinion or arbitrarily."



Applicant has explained in his affidavit that, he received copy of judgment and proceedings in prison through prison authorities. He was not aware of the limitation of time; he came to realize that he is out of time through their fellows' prisoners. Since he was in prison, he had a limited legal assistance. Thus failure to file his appeal on time was beyond his control, as stated in paragraph 5,6,7 and 8 of his affidavit, which are good ground for extension of time in the circumstances of this case.

Court of Appeal in the case of **Mobrama Gold Corportion Ltd Vs. Minister for Energy and Mineral, and East African Goldmines Ltd as Intervor [1998] TLR 245**, observed that;

"It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents' delay does not constitute a case of procedural abuse or contemptuous default and because the respondent will not suffer any prejudice, if extension sought is granted."

What applicant is requesting before this court, is extension of time to file appeal for him to be heard. The right to be heard is safeguarded in the constitution. Article 13(6) (a) of the constitution provides in the Kiswahili version thus;

"(6) Kwa madhumini ya kuhakikisha usawa mbele ya sheria, mamlaka ya nchi itaweka taratibu zinazofaa au zinazo zingatia misingi kwamba;"

"(a) Wakati wa haki na wajibu wa mtu yeyote vinahitajika kufanyiwa uamuzi wa mahakama au chombo kingine kinacho husika, basi mtu huyo atakuwa na haki ya kukata



***rufaa au kupata nafuu nyingine ya sheria kutokana na
maamuzi ya mahakama au chombo hicho kinginecho
kinachohusika.”***

In the circumstances explained by the applicant in the affidavit, there is no procedural abuse, more so, respondent will not suffer any prejudice as both will have right to be heard on intended appeal. I am unable to refuse extension sought. Thus, extension of time granted. Applicant to file his appeal within 45 days from today, and serve respondent accordingly.



A handwritten signature in blue ink, appearing to read "Z. G. Muruke".

Z. G. Muruke

Judge

07/02/2022

Ruling delivered in the presence of G. Magessa, State Attorney for the Respondent and Applicant in Lilungu prison through Video Conference.



A handwritten signature in blue ink, appearing to read "Z. G. Muruke".

Z. G. Muruke

Judge

07/02/2022