

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

AT MTWARA

MISC. CRIMINAL APPLICATION NO. 34 OF 2021

(Originating Case No 113 of 2017 of the District Court of Kilwa at Masoko)

SAID KASIM MBONDE.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

Date of Hearing: 03/02/2022

Date of Ruling: 07/02/2022

RULING

Muruke, J.

Said Kasim Mbonde, was convicted by the District Court of Kilwa at Kilwa for an offence of cultivating Narcotic Drugs, thus sentenced to serve 30 years imprisonment in criminal case no. 113/2017. He prepared notice of appeal, however on 2018 was transferred from Kilwa District Prison to Lindi Prison. While there, applicant escaped from lawful custody. It was until June 2021, when he was arrested, thus returned to Lindi prison. Following sequence of events, he could not appeal in time, thus present application for extension of time to file appeal.

Respondent filed counter affidavit sworn by Lugano B. Mwasubila, Learned State Attorney, to refute contents of applicant affidavit. In essence learned

State Attorney's affidavit insisted on failure by applicant to attach notice alleged filed and proof of applicant escaping from prison.

On the date set for hearing, applicant was in person not represented, thus requested court to adopt his affidavit as his submission in support of the application. Respondent counsel on the 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 be 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, the question as to what it amounts to “sufficient cause” was underscored 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).

Similarly, the Court 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.’

Applicant has explained in his affidavit that, he escaped from prison, thus absence from the prison to process his appeal. Although escaping from prison is an offence by itself, being absent from prison is a 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 MINERALS, AND THE ATTORNEY GENERAL, AND EAST AFRICAN GOLDMINES LTD AS INTERVOR, 1998 TLR** page 425, 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 in requesting before this court is extension of time to file appeal for him to be heard. The right to be heard also 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.

Z. G. Muruke

Judge

07/02/2022.

