

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO. 31 OF 2021

(Originating from Criminal Case of Ruangwa at Ruangwa)

SALUM MOHAMED MATETE.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

Date of Hearing: 03/02/2022

Date of Ruling: 07/02/2022

RULING

Muruke, J.

Salum Mohamed Matete was charged and convicted by the Ruangwa district court for an offence of un natural offence contrary to section 154(1) (a) (2) of the Penal Code, thus sentenced to serve life imprisonment, on 29 March 2021. On 3rd April 2021, he lodged Petition of Appeal and thereafter handed it to the Prison Authority at Ruangwa, for the same to be submitted to this court. Unfortunately, the prison authority delayed to lodge the said Petition of Appeal in time without his knowledge.

Applicant realized that his appeal was filed on the 29th day of May, 2021 on the day when the matter was scheduled for hearing before Hon. W. P. Dyansobera J, on the 27th day of October, 2021, in which appellant withdraw the appeal.

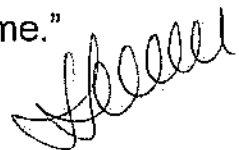


On the date set for hearing applicant was represented by Acrala Blanketi Learned advocate, while respondent was being represented by Wilbroad Ndunguru State Attorney. In the cause of hearing, affidavit of both applicant and respondent were adopted in support of their case, at the request of the court. Applicant avered on his affidavit that, the delay to file previous appeal on 29/05/2021 was caused by reasons beyond his control as the Prison Authority at Ruangwa failed to lodge his Petition of Appeal in time. Applicant insisted that the impugned judgment of the trial court is coupled with serious illegality which ought to be rectified by this court. Respondent filed counter affidavit sworn by Lugano Mwasubila State Attorney to refuse the application for extension of time, for want of sufficient cause.

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 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:-

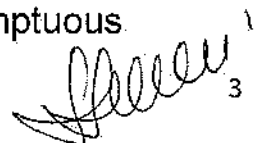
"What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means **the applicant must place before the court material which will move the court to exercise judicial discretion in order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

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

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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 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 kinachohusika, 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 30 days from today, and serve respondent accordingly.

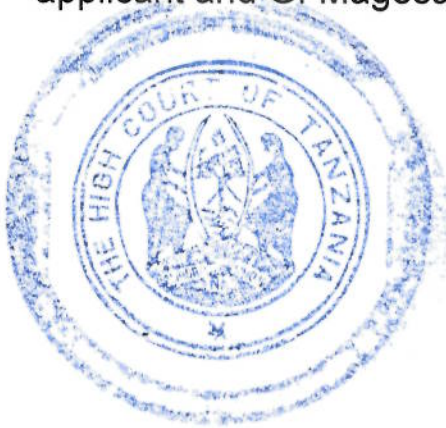


Z. G. Muruke

Judge

07/02/2022.

Ruling Delivered in the presence of Acrala Blanketi counsel for the applicant and G. Magesa for the respondent.



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Z. G. Muruke

Judge

07/02/2022.