

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 2 OF 2022

SALUM S/O ATHUMAN @ HASSAN APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

(Based from the decision of the District Court of Mpanda at Mpanda)

(F. U. Shayo, RM)

Dated 15th day of October 2021

In

Economic Crimes Case No. 2 of 2019

RULING

18/05 & 23/05/2022

NKWABI, J.:

The applicant applied to this court for extension of time within which to file a petition of appeal in this court. The chamber summons is supported by the affidavit of the applicant. There is also the affidavit of the Officer In-charge Mpanda prison to support the affidavit of the applicant.

On 15/10/2021 the Resident Magistrates Court of Katavi at Mpanga convicted and sentenced the applicant to twenty years imprisonment for unlawful possession of ammunitions contrary to section 21(b) of the Firearm and Ammunitions Act, No. 2 of 2015 read together with paragraph 31 of the

first schedule to and sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act Cap. 200 R.E. 2002. The rounds of ammunition were forfeited to the Government of the United Republic of Tanzania.

The reason for the delay in filing the petition of appeal was due to delay by the trial court to supply him with copy of the judgment. He received it on 3rd December, 2021. In paragraph 2 of the affidavit of the officer in-charge of Mpanda prison confirmed that indeed the applicant was supplied with the copy of the judgment on 3rd day of December, 2021.

The record bears the applicant lodged in the trial court a notice of intention to appeal to this court on 21 October, 2021.

When the application was called up for hearing, the applicant appeared in person, unrepresented. The Respondent was represented by Ms. Marietha Maguta, learned State Attorney.

The Applicant prayed to adopt his affidavit as his submission. He had nothing to expound further. On her side, Ms. Maguta stated that after they

went through the affidavits, they have no objection on the application as the applicant was supplied with copy of the judgment on 03/12/2021. The applicant had nothing to say in rejoinder.

Without much ado, I am of the view that this application ought to be granted. Failure to lodge the petition of appeal by the applicant was not caused by the applicant. His delay in lodging the petition of appeal was caused by the trial court's delay in supplying him with the necessary copy of the judgment. Without the copy of the judgment there is no way he could possibly lodge his petition of appeal.

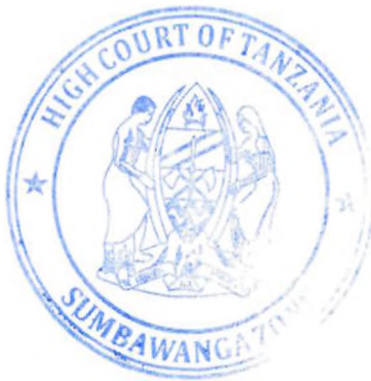
It is, thus, right for Ms. Magutu to support the application. That is in line with of **Emmanuel Gidahotay v Gambanyashita Muhale Misc. Land Application no 41 of 2017** Maige, J. (as he then was) where he had these to say:


"... that failure to file a counter affidavit is a signification that the application is not factually opposed."

In the premises, the application is granted. The applicant is granted 45 days from the date of this ruling to lodge his petition of appeal in this court.

It is so ordered.

DATED at SUMBAWANGA this 23rd day of May 2022.




J. F. NKWABI

JUDGE