

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 108 OF 2021

(Originated from the judgment of the District Court of Simanjiro at Orkeumet in
Criminal Case No. 64 of 2018)

LOWENA THADEI1ST APPLICANT

THADEUS POROKWA.....2ND APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

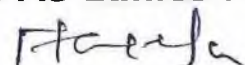
RULING

11.05.2022 & 23.05.2022

N.R. MWASEBA, J.

This application has been brought under the provisions of Section 361 (1) (b) and (2) of the Criminal Procedure Act Cap 20 R.E 2019 where the applicants are seeking for extension of time to file their appeal out of time. The application is supported by an affidavit sworn by Mr Lectony Ngeseyan, counsel for the applicants.

At the hearing of the application the applicants were represented by **Mr Lecktony L. Ngeseyan**, learned advocate whilst **Ms Eunice Makala**,

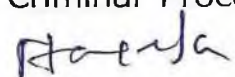


learned State Attorney who did not counter the application, appeared for the respondent.

The reasons for delay as stated in the affidavit supporting the application are as follows: The applicants were charged and convicted by the District Court of Simanjiro at Orkesumet in Criminal Case No. 64 of 2018. The applicants were sentenced to pay Tshs. 300,000/= each or to serve five years in prison and they were ordered further to pay compensation at the tune of Tshs. 9,000,000/= whereby each applicant was supposed to pay Tshs. 3,000,000/=. Both fines and compensation were paid.

The affidavit revealed further that, being aggrieved by the decision the applicants requested to be supplied with the copies of judgment and proceedings so that they could appeal. They lodged a notice of appeal at the trial court on 22.08.2019 which was filed before the court on 22.08.2019. However, those documents were supplied to the applicant on 02.06.2020 and 17.11.2021 after more than 760 days had already lapsed. That situation proved the delay was beyond their control.

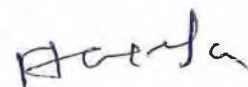
When the application came for hearing on 11.05.2022, Mr Ngeseyan apart from what was narrated in his affidavit supporting the application he added that, Section 361 (1) (b) (2) of the Criminal Procedure Act



provides that an appeal to this court will be done within 45 days from the date of judgment or ruling save for the time a person is waiting for a copy of judgment and proceedings. He added that apart from being supplied with the said copies late, still they are not yet availed the conviction order which is necessary as a decree in Civil Suit.

He added that despite writing several letters to remind the court regarding the said copies of judgment and ruling the same were availed to them after one and a half year. To cement his arguments, he cited the case of **Margwe Erro and Others Vs Moshi Bahalulu**, Civil Appeal No. 111 of 2014, where CAT held that the court cannot automatically enlarge the time unless it has been properly moved. He avers that they received the copy of the proceedings on 17.11.2021 and lodged this application on 6.12.2021 which is 21 days, and therefore they were within the prescribed 45 days.

It was his further submission that, they pray for their time to start running from the day they received a copy of the proceedings on 17.11.2020. He also cited the case of **Hamza Mohamed Ngoti Vs Republic** Misc. Criminal Application No. 6 of 2019 (unreported) in which this court ruled out that the 14 days would start being counted from the date of being supplied with the proceedings.

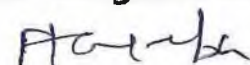


Mr Ngeseyan added that as for their intended grounds of appeal (see annexure P2) there are overwhelming chances of success as it was held in the case of **Dephre Parry v Murray Alexander Carson** (1963) E.A 546 and **Registered Trustees of the Archdiocese of Dar es Salaam**, Civil Appeal No. 147 of 2006. Basing on their submitted reasons, they pray for the application to be granted.

Replying to the submission in chief, Ms Makala learned State Attorney for the respondent stated that, she had no objection to the application since the applicants had not availed the copies of judgment and proceedings within time. Further to that, the records also revealed there was no conviction order.

I have considered the submissions of both parties and the court's records. The vital legal issue here to be determined by this court is whether the applicant adduced sufficient reason for the court to extend the time as prayed.

It is a trite law that an application of this nature will only succeed upon giving sufficient reasons for delay to the court which will lead the court to exercise its discretion to grant the extension. There are a number of authorities regarding this point. One of them is the celebrated case of **Lyamuya Construction Company Ltd Vs Board of Registered**



Trustees of Young Women's Christian Association of Tanzania,
Civil Application No. 2 of 2010 (unreported). In that case, the Court reiterated the following guidelines for the grant of extension of time:

" (a) *The applicant must account for all the period of delay.*

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.

(d) If the court feels that there other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."

In our present application, counsel for the applicant told the court that their delay was caused by failure of the court to supply them copies of the judgment, conviction order and the proceedings within the required time. He added that, until today they have not yet availed the conviction order. They submitted further that a copy of judgment was supplied to

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them on 02.06.2020 while a copy of the proceedings was supplied to them on 17.11.2020.

Regarding the issue of the court to be late in supplying the copies of the proceedings and judgment, it was well clarified in a case of **Mrs. Kamiz Abdullah M.D Kermal vs The Registrar of Buildings and Miss Hawa Bayona** (1988) TLR 199, the Court at page 202 stated that:

"Where delay is due to time taken in preparing the record of appeal, such time certified by the Registrar of the High Court will be excluded in computing the prescribed period, provided of course, a copy of the proceedings is applied for in writing within 30 days of the judgment or order appealed against, and the application is copied to the other party."

In our present application the applicant wrote a letter to request copies of the judgment and proceedings on 14/08/2019 the day the judgment was delivered. They filed the notice of appeal within time. However, they received the said copies after one and a half year had already lapsed. And this court is of the view that the raised reason is sufficient to move the court to extend the time as prayed for.

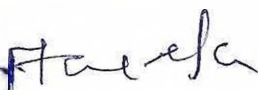
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Thus, in the final analysis, this application for extension of time within which to file an appeal is hereby granted. The applicant should file his appeal within 30 days from the date of this ruling.

It is so ordered.

DATED at ARUSHA this 23rd day of May, 2022.




N.R. MWASEBA

JUDGE

23.05.2022