

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISCELLANEOUS CRIMINAL APPLICATION NO. 40 OF 2022

(Arising from Moshi District Court in Criminal case no. 413 of 2019)

EZEKIEL BONIFACE MWENDO APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

16th & 30th March, 2023

A.P.KILIMI, J.:

The applicant Ezekiel Boniface Mwendo by way of chamber summons has moved this court under section 361 (1) (b) and (2) of the CPA Cap. R.E. 2019 and any other enabling provisions of the law, praying for the following orders: -

1. That this court may grant leave for the Applicant's appeal be heard out of time.
2. That, any other order(s) and relief this court may deem fit and just to grant.

The applicant has supported this application with his duly sworn affidavit, upon which he deposed that after being convicted and sentenced thirty years imprisonment by the district court of Moshi at Moshi, he lodged a notice of intention to Appeal within the prescribed time by law. Then he requested the convicting court to furnish him with copies of judgment and proceedings so as he may prepare and lodge his Appeal to this court.

The applicant further averred at paragraph five of his affidavit that, on October, 2022 Karanga Central Prison authorities received copies of judgment and proceeding and handled to him, through careful observation he realized that the intended Appeal is already time barred. Therefore, he is requesting this court that he was not responsible in any way for such delay of those copies of judgment and proceedings to reach the prison, hence it is incomprehensible for him to bear the consequences of that delay.

At the hearing of this application, applicant stood himself, while the Respondent was represented by Mr. Malima Mabuba, Learned State Attorney.

The applicant prayed this court to adopt his affidavit as his submission and urged them to be considered since he has established reasonable ground for this court to grant his prayer.

In reply, Mr. Malima Mabuba learned State Attorney submitted simply that according to the reasons stated he has no objection to the prayer sought.

Having considered the submission by the applicant and affidavit of the applicant, the point for determination is whether there is sufficient cause for this court to grant the prayer sought.

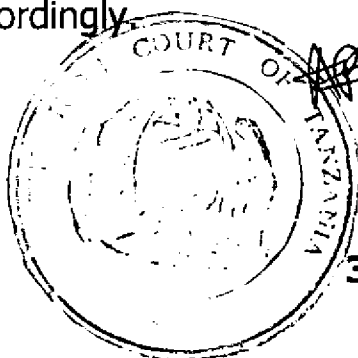
It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judiciously, and the overriding consideration is that there must be sufficient cause for so doing. What amounts to 'sufficient cause/ has not been defined. From decided cases, a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any valid explanation for the delay, and lack of diligence on the part of the applicant. (See the cases of **Yusufu Same and Another v. Hadija Yusufu**, Civil Appeal No.1 of 2002 CAT at Dar es salaam

and **Jubilee Insurance Company (T) Vs. Mohamed Sameer Khan** Civil Application No. 439 of 2020 CAT at Dar es Salaam. (Both unreported).

I have considered the deposed facts of the applicant in his affidavit. After being convicted and sentenced 30 years imprisonment, he lodged notice of intention of appeal within time and requested copies of Judgement and proceedings, he was supplied with these copies on October 2022. It is when he realized that he was out of time to file his intended appeal. Nonetheless, this was not objected by the applicant.

I have considered these reasons stated by the applicant, in view of the position of the authority referred above, I am of considered opinion the reasons stated amount to sufficient cause to grant this application. I therefore grant this application as follows; leave is granted to applicant to file his appeal out of time within 21 days from today.

Order accordingly.



A.P. KILIMI
JUDGE
30/03/2023