

IN THE HIGH COURT OF TANZANIA

AT MBEYA

MISCELLANEOUS CRIMINAL APPLICATION NO. 77 OF 2022

(Originating from the District Court of Mbarali at Rujewa,

Criminal Case No. 56/2018)

EMANUEL S/O MAHENGE.....APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

13th & 20th Feb, 2023

Nongwa, J.

This ruling comes upon application by Emanuel s/o Mahenge and has been preferred under section 361 (2) of Criminal Procedure Act, Cap. 20 R. E. 2019. The applicant is praying for orders that;

- (i) That this court be pleased to grant an extension of time within which to lodge notice of appeal and appeal out of time.
- (ii) Any other relief this court may deem fit and just to grant.

The application has been supported by the affidavit of Emanuel Mahenge, the applicant. From the applicant's affidavit and his oral submission, after being convicted, the applicant alleged to have filed notice of intension to appeal through the prison officer by 2019. That he was transferred to Kitai prison in Ruvuma Region. Upon receiving the copies of judgment and proceedings, while in Ruvuma, he processed the appeal through the prison office and the same was filed. That he

discovered that the notice was not forwarded to court, hence the appeal was struck out. That, as a prisoner, he depends on the prison officers to forward his documents to the court, including the notice of intention to appeal.

The applicant prayed that this court extends the time within which to file notice of appeal and the appeal out of time.

The respondent through the learned State Attorney Mr. Emmanuel Bashona had no objection to the application.

It is the requirement of the law that an appeal from any finding, sentence or order to be preceded by a notice of intension to appeal within ten days. It is clearly stated under section 361 of the Criminal Procedure Act, Cap 20 R.E 2019.

Under subsection (2) of section 361 of the Act (supra), the law allows the court, for a good cause to admit an appeal that is time barred. The only issue for consideration is whether the applicant has advanced good cause to permit the extension of time. It is also provided for under section 14 (1) of the Law of Limitation Act, Cap. 89 R. E. 2019, that extension of time will only be granted upon showing good cause. Accordingly, the court has that discretion to extend time for sufficient reasons. Section 14 (1) provides that;

'Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause extend the period of limitation for the institution of appeal or an application, other than an application for the execution of a decree and an application for such extension may

be made either before or after the expiry of the period of limitation prescribed for such appeal or application'

It has been explained by the applicant that the delay has been caused by the fact that he believed the prison officers have already forwarded to court his notice of intention to appeal, and as he was transferred to another prison in Ruvuma, the appeal was then processed while he was at Kitai in Ruvuma, only to come for hearing and found that the notice had never been filed hence the appeal being struck out. He has demonstrated that all what happened have been out of his control.

It is a well settled principle that, what amounts to sufficient or reasonable cause for the delay depend on number of factors for each case. In the case of **Yusuph Same and Another vs. Hadija Yusuph, Civil Appeal No. 1 of 2002 (CAT)** (unreported) the court stated that;

'.....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, lack of diligence on the part of the applicant, does not amount to sufficient cause.'

Therefore, the grounds upon which an order for extension of time may be granted or otherwise would also depend on the circumstances of each application. This was also stated in the case of **Felix Tumbo Kisima vs. TTCL and Another (1997) TLR**, that:

'It should be observed that "sufficient cause" should not be

interpreted narrowly but should be given a wide interpretation

to encompass all the reasons or cause which are outside the applicant's power to control or influence, resulting in delay in taking any necessary steps.'

It has been stated very clearly that, the applicant made all efforts to promptly file the notice of intention to appeal within the prescribed time through Ruanda prison office before he was transferred to Kitai Prison in Ruvuma, where upon receiving his documents he also processed the appeal through the same prison office. He came to be told that there was no notice filed hence the appeal being incompetent before the court. Despite the fact that he has been in custody since his conviction and sentence, and being transferred from one prison to another he being a lay man, still he has made efforts to ensure he process the appeal, unfortunately the appeal came to be found incompetent. The omission came to be discovered later on hence the striking out of the appeal for want of notice of intention to appeal. All these caused the delay which in my conclusion is valid explanation for the delay and was actually beyond his control.

In the finality, I find the application with merit and proceed to grant the extension of time within which to file notice of intention to appeal and the appeal, the same be filed within 14 days from today.

Dated and Delivered at Mbeya this 20th February, 2023.




V. M. Nongwa
Judge
20/2/2023