

IN THE HIGH COURT OF TANZANIA

AT MBEYA

MISCELLANEOUS CRIMINAL APPLICATION NO. 74 OF 2022

(Originating from the District Court of Chunya at Chunya, Criminal Case No. 52/2021)

JACOB ELIA KATALA.....APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

14th & 28th February, 2023

Nongwa, J.

This Ruling comes upon an application by the applicant Jacob Elia Katala, a Prisoner detained at Ruanda Prison. In the struggle to appeal against the conviction and sentence of the District Court of Chunya at Chunya, Criminal case no. 52 of 2021, the applicant has preferred this application for extension of time within which to lodge his notice of intention to appeal and petition of appeal out of time.

The application has been preferred under section 361 of Criminal Procedure Act, Cap. 20 R. E. 2019, praying for orders that;

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

The application has been supported by the affidavit duly sworn by Jacob Elia Katala.

At the hearing of the application, the applicant told the court he was convicted and sentenced by Chunya District court and was sent to Ruanda central prison on 24/9/2021 and lodged the notice of intention to appeal, on December he was transferred to Kitai Prison in Ruvuma. That on march 2022 he received the copies and the admission office and processed the appeal and as he was out of time he had to apply for extension of time within which to file the notice. As he was brought from Kitai he came to find out that the dates in the affidavit were inconsistent hence the application was struck out and he was given leave of 30 days to file fresh application. He also stated to have signed within 30 days but the filing of the same was delayed by the Prison administration a thing that was out of his control and that there is normally a long que at the admission office for processing appeal documents.

From the affidavit of the applicant, in particular paragraph 4, 6 and 7, after being convicted, the applicant alleged to have filed notice of intention to appeal through the prison officer upon being supplied with the copy of judgment and proceedings he prepared the application for extension of time within which to file notice of appeal, only to be told that the affidavit accompanying the application has defects on the Jurat. That the dates in the Jurat of attestation reads 29.06.2021. while the verification reads to have been dated 29/06/2022, hence the application was struck out while he was given 30 days within which to file proper application. He states in the affidavit that the defect was only a typing error and not otherwise. The applicant prayed that this court extends the time within which to file notice of appeal and petition of appeal out of time.

The respondent through the learned State Attorney Mr. Stephen Rusidamaila objected the application on the ground that the applicant has not accounted for the thirty days leave he was given by the court to file a fresh application. He prayed for the dismissal of 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(1) of the Criminal Procedure Act (supra), while under subsection (2), the court is allowed for a good cause to admit, an appeal that is time barred. The only requirement is for the applicant to advanced good cause to warrant the extension of time within which to file the notice of appeal and the appeal out of time.

The Law of Limitation, under section 14 (1) of the Law of Limitation Act, Cap. 89 R. E. 2019, provides for extension of time only to be granted upon showing good cause. Therefore, the court has that discretion to extend time for sufficient reasons. Section 14 (1) provides;

"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"

From the above quoted provision, whether the delay in filing the notice to appeal and the appeal was with sufficient reason or cause is a determinant of great importance.

It has been explained by the applicant that the delay has been caused by technical issues which have been out of his control because, he had lodged through the Prison Office, the application for extension of time to file notice of intention to appeal immediately after he was availed with necessary documents only to find that he was out of time and he filed application for extension of time, again it was struck out on the ground of defective affidavit as there was typing errors on the verification dates and that in the jurat of attestation, hence the application being struck out.

What amounts to sufficient or reasonable cause is yet to be defined, however, number of factors have to be taken into account to conclude that there is sufficient or reasonable cause for the delay. It has been stated in various case laws including the case of **Yusuph Same and Another vs. Hadija Yusuph, Civil Appeal No. 1 of 2002 (CAT)** (unreported) where it was 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 under scrutinization.

In the case of **Felix Tumbo Kisima vs. TTCL and Another (1997) TLR 57** it was stated 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."

In an application for extension of time, the discretion which falls to be exercised is unrestricted, and should be exercised flexibly with regard to the facts of the particular case.

In the light of the above settled position, it on the record of this application that the applicant he had lodged through the Prison Office an application for extension of time to file notice of intention to appeal. On paragraph 2 the applicant clearly states that through the prison office he prepared and filed notice of intention to appeal, only to be told later on that the appeal he filed was out of time. He then applied for extension of time within which to apply for extension of time and the same was struck out for containing a defective affidavit. At paragraph 6, he explains that was he given 30 days to file a proper application, again the grace period of 30 days lapsed despite the fact that the application was prepared within

time. From the sequence of events obtaining in this matter it is very clear that the applicant has been active trying to pursue his right of appeal.

In determining applications of this nature, one has to examine into the reasons for the delay, this is because the right of appeal is not only a statutory one but a constitutional right, of which a person cannot be lightly denied.

Upon carefully considering the reasons for delay advanced by the applicant, I am satisfied in terms of section 361(2) that the reasons for the delay as shown above constitute good cause.

I accordingly extend the time within which to lodge Notice of intention to appeal and Appeal against the decision in Criminal Case No. 52/2021 of the District Court of Chunya at Chunya. The Notice of Appeal be filed within fourteen days from today.

Dated and Delivered at Mbeya this 28th February, 2023.



A handwritten signature in blue ink, appearing to read "V. M. Nongwa".

V. M. Nongwa

Judge

28/2/2023