

**IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY OF MBEYA
AT MBEYA**

MISC. CRIMINAL APPLICATION NO. 73 OF 2022

*(Originating from the Resident Magistrate Court of Songwe at Vwawa, Criminal Case
No. 13 of 2022)*

- 1. NOUR MOHAMED HAASHI**
- 2. ABDRAHMAN ABDULLE COODAX**
- 3. ABDNAAFA HERSI YUSUF**
- 4. ABDRAHMAN HASSAN AHMED**
- 5. ABDALLAH MOHAMED IISE**
- 6. MURIID MOHAMED MEERE**
- 7. ILYAASMOHAMED NOUR**
- 8. YUSUPH ABDALLAH MOHAMED**
- 9. MOHAMED IBRAHIM MOHAMED**
- 10. SAAD ABUUBAKAR HASSAN**
- 11. ANNAMALI AHMED**

..... **APPLICANTS**

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

13th & 20th Feb, 2023

Nongwa, J.

In the quest to appeal against the conviction and sentence of the Resident Magistrate Court of Songwe at Vwawa, Criminal case no. 13 of 2022, and being out of time within which to lodge a notice of intention to appeal, the applicants, filed this application under section 361 of Criminal Procedure Act, Cap. 20 R. E. 2019, praying for orders that;

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

The respondent through the learned State Attorney Ms. Prosista Paul had no objection to the application.

It is the prerequisite 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. Under section 361 of the Criminal Procedure Act, it is clearly stated that;

'S. 361(1) subject to subsection (2), an appeal from any findings, sentence or order referred to in section 339 shall not be entertained unless the appellant –

- (a) has given notice of his intention to appeal within ten days from the date of the finding; sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and*
- (b) has lodged his petition of appeal within forty-five days from the date of the finding sentence or order.'*

Save that in computing the period of forty-five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded.

(2) The High Court may for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.

Despite the fact that the Respondent has no objection to the application, this court has to satisfy itself as to whether the applicant has advanced good cause to warrant the extension of time to file the notice of appeal and the petition of appeal out of time.

It is well established 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. 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'.

Therefore, the issue is whether the delay in filing the notice to appeal and the appeal bears sufficient reason or cause. It has been stated in the applicants' affidavit at paragraph 2 and 3 that the delay has been caused by technical issues which have been out of their control in that they lodged the appeal on time and upon discovering that they did not lodge notice of intention to appeal, they decided to withdraw the same so as to follow the procedure of lodging a notice of intention to appeal. That, being foreigners, they did not understand well the procedures in Tanzania due to language barrier. That as soon as they discovered their omission, they withdrew the appeal and since time for lodging the notice of appeal had lapsed, they are now applying for

extension of time within which to lodge the notice and the petition of appeal.

Reading section 14(1) of the Law of Limitation Act (supra), the law allows the court for sufficient or reasonable cause to extend the period of limitation for the institution of appeal or an application, other than an application for the execution of a decree. However, number of factors have to be taken into account to conclude that there is sufficient or reasonable cause for the delay. This was also stated in 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.'

It follows therefore, the grounds upon which an order for extension of time may be granted or otherwise, would also depend on the circumstances of each case. Ordinarily, those grounds should be outside one's control. This was the position 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.'

The applicants in the application at hand, filed their appeal on time only to discover that they did not lodge the notice of intention to appeal and decided to withdraw the appeal so that, they comply with the requirement of section 361 of Criminal Procedure Act (supra).

Definitely, the applicant being Somalians who were convicted and sentenced for the offence of unlawful presence in the country were unfamiliar to procedures of appeal and consequently delay in properly processing the appeal on time. However, they have revealed diligence on their part by the help of the prison admission office, managed to file appeal on time only to discover that the notice was not lodged, immediately withdrew their appeal to start afresh the process hence this application.

I find that, the reasons advanced for the delay are reasonable explanation for their delay.

In the finally, I find the application to have merits 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