

IN THE HIGH COURT OF TANZANIA
AT MBEYA
MISCELLANEOUS CRIMINAL APPLICATION NO. 76 OF 2022
(Originating from the District Court of Momba at Chapwa,
Criminal Case No. 96/2018)
REVOCATUS ERNEST MSAMVU.....APPLICANT
VERSUS
THE REPUBLIC..... RESPONDENT

RULING

14th & 27th Feb, 2023

Nongwa, J.

This ruling is in respect of the application filed by the applicant Revocatus Ernest Msamvu, a prisoner detained at Ruanda Prison. The application has been preferred under section 361 of Criminal Procedure Act, Cap. 20 R. E. 2019 (now R.E.2022), praying for orders that;

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

The application has been supported by the affidavit dully sworn by Revocatus Ernest Msamvu, the applicant. From the applicants' affidavit and his oral submission, the applicant alleged to have been convicted and sentenced on 22/2/2019 and was detained at Mbozi District Prison and

immediately on 23/2/2019 he prepared notice of intension to appeal and handled it for transmission to court through the prison officer.

That before he was supplied with necessary documents; judgment and proceedings, he was transferred from Mbozi Prison to Ruanda Mbeya Prison on 26/2/2019 and immediately on 12/4/2019 he was again transferred to Kitai Prison, at Mbinga in Ruvuma Region. While in Kitai Ruvuma, he received the copies of judgment and proceedings between October and November 2021, prepared the appeal and forwarded to court through Prison office. In the wait of the outcome of the process, he came to be told that the appeal was filed out of time for the same to be determined by the court. He then prepared the application for extension of time to appeal out of time only to be told that there was no notice at all, in that, the notice he filed while at Mbozi Prison was not forwarded to court a thing which was beyond the applicant's control. The applicant prayed that this court extends the time within which to file notice of appeal and he appeal out of time.

The respondent through the learned State Attorney Mr. Joseph Mwakasege had no objection to the application.

It is the requirement of the law under section 361(1) of the Criminal Procedure Act, Cap 20 R.E. 2019 (now R.E.2022), that an appeal from any finding, sentence or order to be preceded by a notice of intension to appeal within ten days. Under subsection (2) the court, for a good cause may admit an appeal that is time barred. Therefore, it is the courts discretion where the applicant has shown good cause, to admit an appeal that is time

barred. Moreover, the law 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.

The question now is whether the applicant has advanced good cause to warrant the extension of time to file the notice of appeal and the appeal out of time.

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 Officer, the notice of intention to appeal within time and the appeal was lodged within the required time only to come to find there was no notice before the court hence the appeal being struck out and he had to re start the process.

It is obvious that there is no precise definition as to what amounts to sufficient or reasonable, and it has been held by courts many times that, number of factors have to be considered to conclude that there is sufficient or reasonable cause for the delay. In **Yusuph Same and Another vs. Hadija Yusuph, Civil Appeal No. 1 of 2002 (CAT)** (unreported) it was stated that 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

scrutiny, those reasons should be outside applicant's control, he has to have shown diligence on his part.

I have severally referred the case of **Felix Tumbo Kisima vs. TTCL and Another (1997) TLR 57** when it comes to the issue of what amounts to sufficient cause. In that case it was stressed that sufficient cause should not be interpreted narrowly, rather it should be given a wide interpretation to include all the reasons or causes which are beyond the power of the applicant to control or influence and which brought delay in taking any necessary steps.

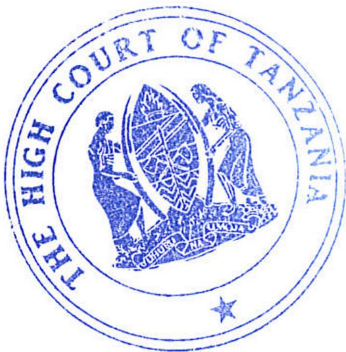
In the application at hand the main reasons for prayer for leave of extension of time to file notice of intention to appeal and appeal to this court are found under paragraph 2, 3,4,5 and 8 of the applicant's affidavit and those reasons being out of his control in that he depended much on the Prison office to prepare and transmit his documents, they did not do that at the earliest stage until he was transferred from one prison to another.

It is evident that, the applicant made all efforts to promptly file the notice and appeal by the help of the relative. Despite the fact that he has been in custody since his conviction and sentence, he being a lay man, being transferred from one prison to another, delay in being supplied with necessary document, delay in transmitting the application to court by the Prison office, still he has demonstrated diligence on his part by the help of the prison admission office and managed to file the applications that were found to be defective and he has managed to file afresh application within

the prescribed time. The defects came to be discovered later on hence the striking out of the appeal and the application for extension of time was again struck out for bearing improper address as seen in the records dated 29/8/2022. All these were the cause of the delay, the delay which in my verdict was actually beyond his control. All that are valid explanation for the delay.

In the finality, it is ruled out that the application has merit and I 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 27th February, 2023.



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

V. M. Nongwa

Judge

27/2/2023