

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF MOSHI**

**AT MOSHI**

**MISC. CRIMINAL APPLICATION NO. 1 OF 2023**

**ALEX AYUBU ..... APPLICANT**

***VERSUS***

**REPUBLIC.....RESPONDENT**

**RULING**

15<sup>th</sup> & 16<sup>th</sup> February, 2023

**A.P.KILIMI, J.:**

The applicant, ALEX AYUBU has moved this court by way of chamber summons under section 10 of the Appellate jurisdiction Act 141 R.E 2019 and section 361 (1) (b) and (2) of the CPA Cap 20 R.E 2022 and other enabling provisions of the law, praying for the following orders; First, that, this court may grant leave for the Applicant's appeal be heard out of time. And second, that, any other order(s) and relief (s) this court may deem it fit and just to grant. The applicant has supported this prayer by his duly sworn affidavit.

When the matter came for hearing, the applicant stood himself and submitted nothing but prayed this court to consider his affidavit. The Republic was represented by Ms. Mary Lucas Learned Senior State Attorney.

The applicant in his affidavit avers that, after being convicted and sentenced to thirty (30) years imprisonment by the District court of Same at Same, he lodged a notice of intention to Appeal within the prescribed time by the law. He then requested the convicting court to furnish the copies of Judgement and proceedings so as he may prepare and lodge his appeal. The same was received on October, 2022 at Karanga Central Prison. Although it was endorsed on 24<sup>th</sup> May.2022 but the same were supplied to him in October, 2022. Thereafter, through careful observation he realized that was already time barred. He concluded by averring that according to these circumstances, he could have not accomplish his mission of appeal except to wait the said documents to meet him in Karanga Prison. Therefore he prays his application be granted.

Responding to the applicant prayer, Mary Lucas, Senior State Attorney submitted that she don't object applicant's application because after perusing his chamber summons supported by affidavit, she sees it is true



applicant was in prison, therefore he could have done nothing without being supplied with the said copy of proceeding and judgment.

I have considered the applicant's prayer, he has used two laws to move this court, this issue has been addressed by me in precedented cases of a similar situation, it seems at Karanga, applicants having this kind of matter use prescribed documents, and they merely change the name of applicants. I advise this must be stopped. However, as I said previously, in my view the applicant was not right to use section 10 of Appellate Jurisdiction Act Cap 141 R.E 2019, despite of being deals with matters from High Court to court of Appeal, the provision deals with the power of the High Court to admit to bail or postpone fine. Nonetheless, with the advent of the principle of Overriding Objective brought by the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2018 [ACT No. 8 of 2018] which now requires the courts to deal with cases justly, and to have regard to substantive justice, I see the remaining provision of the law is enough to move this court

It is a trite law that, extension of time is the discretion of the court and not automatic, however, in exercise of that discretion the court should look cumulatively of factors and not only one point. In the case of **Lyamuya Construction Company Limited v. Board of Trustees of Young**

**Women Christian Association of Tanzania**, Civil Application No. 02 of 2010 (unreported), at page 6 to 7. The factors to be considered when the court exercising discretion was elaborated to be as follows: -

*"(a) The applicant must account for all the period of delay.*

*(b) The delay should not be Inordinate.*

*(c) The applicant **must show diligence and not apathy negligence or sloppiness** in the prosecution of the action that he intends to take.*

*(d) If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance"*

[Emphasizes Supplied]

Applying my minds to the above decision, I am in agreement with the learned Senior State Attorney that this application should be granted because, in considering his affidavit the applicant lodged a notice of intention to Appeal within the prescribed time by the law. He thereafter requested the convicting court to furnish the copies of Judgement and proceedings. Therefore, since he was in prison, he has to wait until the same is supplied

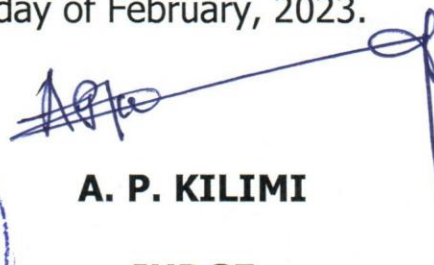
to him by Prison Officer In charge, It is my considered opinion he exercised his due diligence to the process of appeal to his capacity, therefore it is my view this amount to sufficient reasons for this application to be granted.

For the foregoing reasons, this application has merit and I hereby grant it as prayed. Consequently, I order the applicant to file the intended appeal within 21 days from today.

It is so ordered.

**DATED** at **MOSHI** this 16<sup>th</sup> day of February, 2023.



A handwritten signature in blue ink, appearing to be "A. P. Kilimi", is written over a horizontal line. A long, thin vertical line extends downwards from the end of the signature.

**A. P. KILIMI**

**JUDGE**

**16/2/2023**