

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISCELLANEOUS CRIMINAL APPLICATION NO. 39 OF 2022

(Arising from the decision of Same District Court in Criminal case no. 413 of 2019)

EZEKIEL ELINAS @ MBWAMBO APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

15th June & 11th July, 2023

A.P.KILIMI, J.:

The applicant Ezekiel Elinas @ Mbwambo story gleaned from his duly sworn affidavit filed in this court on 12th day of July, 2022 was to the effect that; he was convicted by Same District Court and sentenced to serve twenty years imprisonment for the offence charged. Thereafter he was transferred to Karanga Central Prison, he then communicated with the said Prison Authorities to communicate with Same District Court for his copies of Judgment and proceeding. Later the same were brought in the prison and handled to him on 12th October, 2022. Then he prepared the memorandum of appeal but he was paused after found himself late to file his appeal.

Consequently, he resorted to this application by way of chamber summons under section 361 (1) (c) and (2) of the CPA Cap. R.E. 2019 and any other enabling provisions of the law, praying for the following orders: -

- 1. That, this court may grant leave for the Applicant appeal be heard and determined out of time.*
- 2. That, any other order(s) and relief this court may deem fit and just to grant.*

When this application came for hearing on 15th day of June, 2023. The applicant was unrepresented while Mr. Utafu Peter and Edith Msenga both learned state Attorneys appeared for the Respondent.

The applicant then prayed this court to consider what he has deponed in his affidavit and concluded by praying the time be extended to file his appeal.

In reply, Mr. Utafu learned State Attorney submitted that the respondent have no objection, and he reasoned that for the interest of just let this case be heard on merit.

Having considered the submission by the applicant and his affidavit, the point for determination is whether there is sufficient cause for this court to grant the prayer sought.

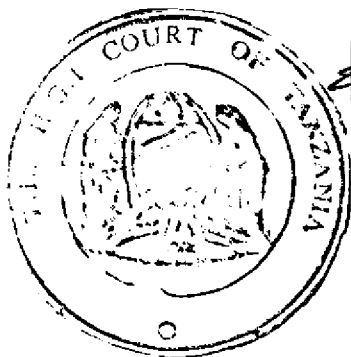
It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judiciously, and the overriding consideration is that there must be sufficient cause for so doing.

However, 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. (See the cases of **Yusufu Same and Another vs. Hadija Yusufu**, Civil Appeal No.1 of 2002 CAT at Dar es salaam and **Jubilee Insurance Company (T) vs. Mohamed Sameer Khan** Civil Application No. 439 of 2020 CAT at Dar es Salaam. (Both unreported).

I have considered the deposed facts of the applicant in his affidavit. After being convicted and sentenced 20 years imprisonment, he lodged notice of intention of appeal within time and requested copies of Judgement and proceedings, he was supplied with these copies on October 2022. It is when he realized that he was out of time to file his intended appeal. Moreover, this application was not objected by the respondent.

I have considered the reasons stated by the applicant, in view of the position of the authority referred above, I am of considered opinion the applicant exercised his due diligent to file the appeal within the time, thus he was not negligent on his part. Therefore, in the circumstances the reasons stated amount to sufficient cause to grant this application. I therefore hereby grant this application as follows; leave is granted to the applicant to file his appeal out of time within 60 days from today.

It is so ordered.



A.P.K.

A.P. KILIMI
JUDGE
11/07/2023