

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA
CRIMINAL APPLICATION No. 04 OF 2023**
(Originating from Criminal Appeal No. 73 of 2023 of High Court Shinyanga)

LEOPORD CHIFUNDA LUMBE.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

17th July 2023

F. H. MAHIMBALI, J

The applicant was convicted by Kahama district Court on fourteen counts of obtaining money by false pretence and sentenced to serve one year under community service. Further to that he was ordered to return the money fraudulently obtained (**amounting TZS: 85,690,000/=**). He was dissatisfied by the said conviction, thus lodged his notice of appeal to High Court but wrongly referred it to High Court Mwanza instead of Shinyanga. However, his appeal was rightly directed to High Court Shinyanga. Therefore, as he had a notice of appeal worded High Court Mwanza but his appeal was rightly worded High Court Shinyanga, nevertheless, both

documents were filed at High Court Shinyanga, thus, the birth of the Criminal Appeal No.73 of 2022 which was struck out for being incompetent mainly on the defectiveness of the Notice of Appeal worded High Court Mwanza instead of Shinyanga.

As he was out of time following the strike out order being issued in his absence, the applicant opted for this current application praying for extension of time to file both notice of appeal and appeal as required by law, which application has been resisted by the respondent.

As to why the said application is resisted by the respondent, Ms Mboneke Ndimubenya learned state attorney is of the firm view that the alleged grounds for the extension of time are not sufficient and others not established. It was submitted that, the issue of sickness though is valid ground but was not substantiated by evidence from the applicant that he was sick and that the sickness really prevented him from timely filing the application for extension of time. Secondly, she submitted that the ground on economic reason has never been a good ground as per law to warrant the grant of the said extension of time as prayed. Similarly, she criticized the ground of geographical location of his village being also a bottle neck of his untimeliness of filing the said application.

Upon a thorough scanning of the applicant's application and the reasons contained into his affidavit and the ruling of this court (by my brother Kulita J) vide the former Criminal Appeal No.73 of 2022v dated 22nd February 2023, it is undisputed that the former appeal was timely filed save that it had an apparent error on the notice of appeal initiating the appeal on the name of the registry to be filed. That instead of Shinyanga High Court, it was worded Mwanza High Court but lodged to this Court. In my considered view, had the applicant not confused the names of registry, his appeal was rightly on time. Considering the fact that this application was filed in less than a month after being struck out by the Court, the applicant was not asleep of his legal right. Of course, I am aware that the grant or refusal of such an application is court's discretionary power which the same ought to be judiciously exercised (See **TanESCO Vs. Mfungo Leonard Mkajura** (civil Appeal No. 94/2016, **Ngao Godwin Losero** (Civil Application No. 10 of 2015 at page 4). In these case, amongst other things the Court of Appeal set basic guidelines/conditions prior to granting extension of time as constituting sufficient reasons or good causes.

Guided by the minimal guidelines set by the court of Appeal in the case of **Ngao Godwin Losero** (supra) making reference to the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (Civil Application No. 2/2010 – *unreported*) the Court of Appeal reiterated the following guidelines for the grant of extension of time.

- 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 is intending to take.*
- d) If the court feels that there are other sufficient reasons such as existence of a point of law of sufficient importance; such as the illegality of the decisions ought to be challenged.*

In reaching this verdict, I have dispassionately considered and weighed the rival arguments from parties. For sure I am mindful that to refuse or grant this application is the court's discretion.

However, to do so there must accounted reasons for that. In Mbogo Vs. Shah (1968) EA the defunct Court of Appeal for Eastern Africa held:

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time....."

So long as the applicant had timely filed his notice of appeal and accordingly lodged his appeal as per law, only that it was defective on the title of the notice of appeal for being addressed as High Court Mwanza instead of Shinyanga, which upon being struck out *exparte* he diligently filed this current application, whereas I agree with Ms. Mboneke Ndimubenya learned state attorney that the three grounds: sickness, economic hardship and remoteness of his village were neither established nor are they good causes for their consideration, I grant the application on the ground that the applicant has shown diligence and not apathy, negligence or sloppiness in the prosecution of the action that he is intending to take. To deny this application now might completely shut down the applicant's quench of justice and thus prejudice on his part. Let him pursue his legal course extensively.

That said, the application is granted. The applicant is to file his notice of appeal within ten days from today and thereafter his appeal within 45 days as per law.

DATED at SHINYANGA this 17th day of July, 2023.

F.H. MAHIMBALI

JUDGE

Ruling delivered today the 17th day of July, 2023 in the presence of the applicant and respondent represented by Ms Mboneke Ndimubanya, learned State Attorney and Ms Beatrice, RMA, present in Chamber Court.



F.H. MAHIMBALI

JUDGE

17/7/2023