

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

**IN THE SUB-REGISTRY OF MANYARA**

**AT BABATI**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 8 OF 2023**

*(Arising from the Criminal Appeal No. 14 of 2023 High Court of (T) Manyara sub-registry and original Criminal Case No 53 of 2020 before the District Court of Babati at Babati)*

**SWALEHE ABDUL .....APPLICANT**

***VERSUS***

**THE REPUBLIC ..... RESPONDENT**

**RULING**

*16<sup>th</sup> & 23<sup>rd</sup> August, 2023*

***Kahyoza, J.:***

**Swalehe Abdul**, the applicant, was convicted by the district court with one count of unnatural offence and sentenced to thirty years' imprisonment. He lodged a notice of appeal timely but defaulted to file his appeal within the prescribed time. **Swalehe Abdul** applied for extension of time to lodge the notice of appeal contending that after he obtained a copy of the judgment he lodged his appeal which was struck out for being time

barred. He added that he got assistance from the prison's officer to institute the appeal and that he did not know that his appeal was out of time.

The Respondent's state attorney, Ms. Leah, opposed the application. She averred in her counter affidavit and submitted that the applicant did not adduce sufficient reason to support an application for extension of time. She contended that a person applying for extension of time must give sufficient reason for delay. To support her contention, she cited the case of **Awadh Abdallah Lugwa v. R.**, Misc. Crim. Application No. 39/2022 of the High Court, Mtwara Sub-registry. She also cited case of **Benjamin Amon v. R.** Criminal application No. 106/11 of 2018 (CAT-Unreported). She added that the applicant delayed to appeal for 74 days and did not account for the delay.

Briefly the record shows that after the court convicted and sentenced the applicant, he timely lodged a notice of appeal. For reasons not disclosed the applicant delayed to appeal. He lodged an application for extension of time to appeal to this Court – Arusha sub-registry. The application was baptized **Swalehe Abdul v. R.**, Misc. Criminal application No. 38/2021 High Court Arusha sub-registry. Unfortunately, the applicant's application was

struck out because the applicant had not lodged the notice of appeal. The Court stated, while striking out the application that-

*"This application is not granted for obvious reasons that the Notice of intention to appeal was not filed as required under section 361(1) (a) of the CPA."*

After the applicant's application for extension of time to appeal was struck out on the 11.11.2021, the applicant lodged an appeal to the High Court, Manyara Sub-registry. the High Court, Manyara Sub-registry struck out the appeal for being lodged out of time, hence, the applicant instituted the instant application.

It is settled that a person applying for extension of time has to adduce sufficient reason for delay and that he must account for period of delay. I wish to rely on holding of the Court of Appeal in **Dar es Salaam City Council v. Jayantilal P. Rajani** - CAT Civil Application No. 27 of 1987 (unreported), and **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application NO. 6 of 2001 (unreported) where it was held that-

*"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 judicially and the overriding consideration is that there must be sufficient cause for so doing. 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 or valid explanation for the delay; lack of diligence on the part of the applicant."*

Having considered the affidavit, the counter affidavit and the background of this matter, it is obvious that the applicant has not disclosed the grounds for delay. The applicant did not disclose the date he obtained the copy of the judgment. It is certain from the background elucidated, that he obtained a copy of the judgment before 2021. He was required to account the delay from 2021 to April, 2023 when he filed the instant application. He has not made that attempt. I agree with the respondent's state attorney, that the applicant has failed to account for time of delay.

To worsen the situation, the applicant did not disclose in his application that he once filed an application for extension of time, which this Court, Arusha sub-registry and the same was struck out. Had the applicant disclosed the fact that he had filed an application for extension of time which

was struck out, this Court would have no jurisdiction to re-entertain another application for extension of time. Since the record shows that the applicant is making a second attempt to apply for extension of time before the same Court, obvious his application is incompetent. The applicant was required to appeal to the Court of Appeal against the decision of this Court in **Swalehe Abdul v. R.**, Misc. Criminal application No. 38/2021 High Court Arusha sub-registry and not re-apply for extension of time.

Eventually, I find that the applicant has not adduced sufficient reason for delay. Consequently, I dismiss the application.

I order accordingly.

Dated at Babati this **23<sup>rd</sup>** day of **August**, 2023.



**John R. Kahyoza,**  
**Judge**

**Court:** Ruling delivered in the virtual presence of the applicant and Ms. Leah State attorney. Ms. Fatina, bench clerk present virtually.

**John R. Kahyoza, J.**

**23. 08.2023**