

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISCELLANEOUS CRIMINAL APPLICATION NO. 9 OF 2023

(Arising from the decision of the District Court of Hai at Hai, dated 2nd March, 2023 in Criminal Case No. 49 of 2022)

BERNAD S/O CHARLES @NDEANKA..... APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

26th July & 24th August, 2023

A.P.KILIMI, J.:

The applicant herein was convicted and sentenced to serve thirty years imprisonment for the offence of Rape by the District Court of Hai. He could not lodge as per requirement of the law a notice of appeal on time, thus to rescue the situation, he has opted to move this court by way of chamber summons under Sections 14 (1) and (2) of the Law of Limitation Act, Cap 89 R.E 2019, Section 359(1), 361 (2), 392A (1) and (2) of the Criminal Procedure Act CAP 20 R.E 2022 and any other enabling provision of the law, seeking for the following orders;

1. That this Court be pleased to grant the Applicant for extension of time to file Notice of Appeal, against the Judgment of Hai District Court in Criminal Case No. 49/2022
2. Any other relief(s) this Honorable Court may deem just and equitable to grant.

This application is supported by an affidavit of Christina Israel Kawanara, the learned counsel dully instructed by the applicant. In this affidavit the counsel has deposed that Applicant aggrieved by the said Judgment and sentence, could not lodge his notice of appeal on time as the right of appeal was not explained to him and no any information explained to him as to the time he should lodge his notice of appeal, later he requested for copies of Judgment and Proceedings to facilitate his appeal, but upon receipt of the same, the time was not in his part hence this application.

When this application was presented for hearing before me, Ms. Edith Msenga, learned State Attorney appeared for Respondent while applicant enjoyed the services of Ms. Christina Israel Kawanara, learned advocate.

Ms. Christina Kawanara reiterated what she has deposed in her affidavit and further submitted that the failure to state right to appeal by the trial court was contrary to section 359 of CPA, therefore it was the mistake of the court, thus need to be avail the missed right. To buttress this requirement beseeched this court to consider the case of **Mount Meru**

Flowers Tanzania Limited vs. Box Board Tanzania Limited Civil
Appeal No. 260 of 2018.

Responding to the above claims, Ms. Edith Msenga learned State Attorney did not object this application, but rather Admitted that, it is true right to appeal was not explained which is contrary to the law, therefore, she conceded that it has occasion failure of appellant to file appeal in time. She further urged this court to consider also oxygen principle, and let the matter be heard in substance.

I have considered the affidavit attached to this application, and submissions by the learned counsel for the applicant and the learned State Attorney which both supported this application. Before, I go into the verdict, I wish to point out 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.

Nonetheless, 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. (See **Usufu Same and Hawa Dada vs. Hadija Yusufu**, Civil Appeal No. 1 of 2002.)

Now, the question before me is whether there is any sufficient cause for this application to be granted.

I have considered supported reasons stated above and the record of the court, it is apparent and true that the said right was not availed to the applicant at the trial court, it is also my view this is a fundamental right need to be availed to any litigant upon the conclusion of any case affecting individual right.


According to Article 13(6)(a) of the Constitution of the United Republic of Tanzania of 1977, Chapter 2 of the Laws as amended from time to time, provides that;

"When the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned"

In the premises, it is therefore my considered opinion, this right must be stated after determination of individual right, the fact it was not stated it occasioned failure of justice on part of the applicant. In the circumstance, I hereby find the application has merit and I proceed to grant this application forthwith. The applicant to file notice of appeal within seven days and next to file his appeal within (30) thirty days from the day of this Judgment.

It is so ordered.

DATED at **MOSHI** this day of 31st August 2023.

A handwritten signature in black ink, appearing to read 'A.P. Kilimi', is written over a horizontal line. A long, thin vertical line extends downwards from the right end of the signature.

A. P. KILIMI

JUDGE

31/8/2023

Court: Ruling delivered today on 31st day of August 2023 in the presence of Ms. Christina Kawanara for applicant. Ms. Edith Msenga learned State Attorney absent. Applicant also present.

Sgd: A. P. KILIMI

JUDGE

31/8/2023