

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA
MISC. CRIMINAL APPLICATION NO. 52 OF 2023

(Original Criminal Case No.159 of 2019 at Singida District Court)

THE DIRECTOR OF PUBLIC PROSECUTIONS.....APPLICANT

VERSUS

CALVART LACHIMANRESPONDENT

RULING

Date of Last order: 20/09/2023

Date of Ruling: 20/09/2023

A.J. MAMBI, J.

This Ruling emanates from an application filled by the applicant for an extension of time to file an appeal out of time. The applicant in her application has prayed to this court to allow her to file an appeal out of time against the decision made by the District Court. The application is supported by an affidavit sworn by Francis Kesanta a State Attorney where the applicant has stated the reasons for her delay.

During hearing this Court ordered the matter to proceed ex-parte against the respondent as he had never entered appearance for three

times consecutively albeit summons being served to him. On the other hand, the applicant appeared under the legal services of Ms. Sara and Mr. Mwakifuna learned State Attorneys.

In thier submission, the learned State Attorneys briefly contended that they have filed their application supported by an affidavit. They argued that they have sufficient reasons to do so. They briefly submitted that they rely on the reasons stated in paragraph 5, 6, 7 and 8 under the affidavit. The learned State Attorneys argued that they delayed due to the official arrangement as the impugned matter was determined in Singida and the appeal was supposed to be filed at Dodoma and further that there is an illegality and procedural irregularity at the trial court as it failed to consider a proper charge by dealing with a replaced charge in its decision.

I have considerably perused the documents and considered the submissions made by the applicant to find out whether this application has merit or not. My findings will be based on determining the issue as to whether the applicant has advanced sufficient reasons for this Court to consider her application for an extension of time to file an appeal out of time.

The position of the law and case studies is clear that where any party seeks for an extension of time to file an appeal out of time, he is required to advance sufficient reason(s) in his affidavit before the court can consider and allow such application. This position was clearly underscored by the Court of Appeal of Tanzania in ***REGIONAL MANAGER TANROADS KAGERA V. RUAHA CONCRETE***

COMPANY LTD, CIVIL APPLICATION NO.96 OF 2007 (CAT unreported). The court in this case observed that;

"the test for determining an application for extension of time, is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted".

The court went on to state that;

*"What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means **the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules**" (emphasis supplied).*

Similarly, The Court in **TANGA CEMENT Co. LTD vs JUMANNE D. MASANGWA AND ANOTHER, CIVIL APPLICATION NO 6 OF 2001** clearly held that:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for delay; lack of diligence on the part of the applicant".

Reference can also be made to the decision of the Court of Appeal in **MOBRAMA GOLD CORPORATION LTD VS MINISTER FOR**

ENERGY AND MINERALS, AND THE ATTORNEY GENERAL, AND EAST AFRICAN GOLDMINES LTD as INTERVENOR, (1998) TLR 425 where the court observed as follows;

"It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents' delay does not constitute a case of procedural abuse or contemptuous default and because the applicant" will not suffer any prejudice, an extension should be granted.

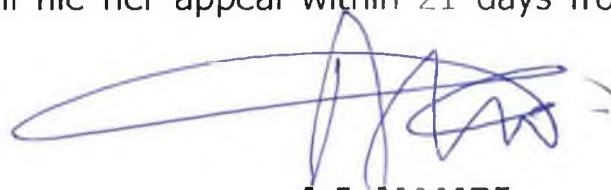
This means that in determining an application for extension of time, the court has to consider if the applicant has established sufficient cause or good cause as to why the sought application is to be granted. In other words, the court need to take into account factors such as reasons for delay and that is where the applicant is expected to account for cause of delay of every day that passes beyond the aforesaid period. Lengthy of the delay is to be shown that such reasons were operated for all the period of delay.

I have perused the applicant's documents including the affidavit on her behalf in line with the submissions advanced by the learned State Attorneys and found that the applicant has indicated reasonable or sufficient cause to enable this court to consider and grant this application. Indeed, the affidavit of the applicant and other records shows that the charge sheet that was relied by the trial court was that which was substituted by the new one by the prosecution. This by itself is an illegality worth grant of extension of time within which to appeal

out of time. Further to that, the matter subject of this application was prosecuted by the prosecutions in Singida and decided in Singida District Court. However, the appeal of the said matter is to be determined by the High Court of Tanzania Dodoma Registry meaning the prosecutions of Dodoma had to take charge. Due to the distance, I am in agreement with the applicant that time lapsed due to preparation, consultation and approval of the documents prepared for appeal (the petition of appeal) and other official arrangements of filing the said documents of appeal.

That said as alluded above, this Court is satisfied that the applicant has indicated reasonable or sufficient cause to enable this court to consider and grant this application.

Now since the applicant have advanced and presented sufficient reasons for delay and the extent of such delay in her application, I have no reason to dis-grant this application. I am of the considered view that this application has merit and this court finds proper the applicant to be granted an extension of time to appeal out of time. The applicant shall file her appeal within 21 days from the date of this ruling.



A.J. MAMBI

JUDGE

20.09.2023

Ruling delivered in Chambers this 20th day of September 2023 in presence of Ms. Sarah and Mr. Mwakifuna State Attorneys.



A.J. MAMBI

JUDGE

20.09.2023

Right of appeal explained.



A.J. MAMBI

JUDGE

20.09.2023