

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA SUB - REGISTRY)

AT SONGEA

MISCELLANEOUS CRIMINAL APPLICATION NO. 15 OF 2023

(Originating from Criminal Case No. 85/2023 in the Tunduru District Court)

ABEID SEFU @ LUPINDA..... APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of last Order: 10/10/2023

Date of Ruling: 20/10/2023

U. E. Madeha, J

To begin with, this is an application filed by the above-named applicant seeking for extension of time within which he can filed notice of intention to appeal and petition of appeal out of time. As a matter of fact, the application is made by way of chamber summons under section 361 (1) (a) and (b) and (2) of the *Criminal Procedure Act* (Cap. 20, R. E. 2022) whereby it is supported by an affidavit affirmed by the applicant.

It is worth considering the fact that, the application was strongly resisted through a counter affidavit sworn by none other than; Mr. Madundo Mhina, the learned State's Attorney representing the respondent, who also appeared for the respondent when this application was called on for the hearing.

It is worth considering that, At the hearing, the applicant appeared in person. Basically, the reasons advanced by the applicant in his affidavit as well as in his submissions made at the hearing of the application is on the fact that he prepared his notice of intention to appeal and petition of appeal on time however the Prison Officers failed to assist him by filing in Court. For that reason, he insisted for the orders sought in this application to be granted.

On the contrary, Mr. Madundo Mhina vehemently resisted the application and he submitted that granting an order for the extension of time is within the discretion of the Court given under section 361 (2) of the *Criminal Procedure Act* (supra). To add to it, he insisted that, for the Court to use its discretionary power, the applicant must have sufficient reasons.

Additionally, he submitted that in this application the reason advanced by the applicant is on the fact that, he prepared his notice of intention to appeal and petition of appeal on time although the delay was attributed by the Prison Officers who failed to file them in Court on time.

On the same note, Mr. Mhina went on contending that for the application of this nature to be successful; no doubt that, the applicant is required to file his application within reasonable time but in the present application the impugned decision was delivered on 12th July, 2023 while this application was filed on 31st August, 2023, which was almost after the period of one month and two weeks. Undoubtedly, Mr. Mhina further insisted that, Courts usually grants an order for extension of time where there are sufficient and genuine reasons such as illegality on the impugned decision as it was stated by the Court of Appeal of Tanzania in **Barclays Bank Tanzania Limited v. Pharmaceutical Industries & Three Others**, Civil Application No. 62/16 of 2018.

To crown it all, he concluded by stating that; in this application, the applicant has failed to advance genuine reason for this Court to use its discretionary power to grant for the extension of time to file his notice of

intention to appeal and petition of appeal out of time. Lastly, he prayed for this Court to dismiss the application accordingly since it has no merit.

Notably, rejoining to the submissions made by the respondent's learned State's Attorney, the applicant reiterated his prayers made in his submission in-chief that this Court may grant an order for extension of time so that he can file the notice of intention to appeal and petition of appeal out of time. As much as this application is concerned, I find that the main issue to be addressed in this application is whether the applicant has adduced sufficient reason, genuine or good cause to enable this Court to use its discretion power to grant an order for extension of time for the applicant to file his notice of intention to appeal and petition of appeal out of time.

As a matter of fact, our law does not define what amount to sufficient cause. However, in the case of **Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Ltd**, Civil Application NO.96 of 2007 (unreported), it was held that:

"Sufficient reasons cannot be laid down by any hard and fast rule. This must be determined in reference to all the circumstances of each

particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time”.

As far as I am concerned, I have carefully considered the reasons adduced by the Applicant in this application that the delay was attributed by the Prison Officers who failed to file his documents on time before this Court. Also, I have also considered the fact that; the delay was for only two (02) weeks from the lapse of time and not one (01)) month and two (02) weeks as stated by the learned State's Attorney for the respondent. It is also important to note that, the applicant was in prison ever since when the judgment was delivered. Actually, all matters were not in his domain to be able to control them as he has stated.

Therefore, I find that it is apparent that the applicant's delay to file his notice of intention to appeal and petition of appeal was caused by factors beyond the ability of the applicant to control and cannot be blamed on them. In addition, the applicant has not shown any apathy, negligence or sloppiness in his intention to prosecute the appeal as it was emphasized in the case of **Lyamuya Construction Co. Ltd v. Board of Registered of Young Women's Christian Association of Tanzania**, Civil

Application 2 of 2010 [2011] TZCA 4 (3 October 2011: TanzLII). For the foregoing reasons, I find and hold that the applicant has advanced sufficient and genuine reason for the delay to warrant this Court to exercise its discretion to grant the enlargement sought.

To put it in a nutshell, the applicant is hereby given ten (10) solid days to lodge his notice of intention to appeal and petition of appeal effective from the delivery of this ruling. It is so ordered.

DATED and DELIVERED at SONGEA this 20th day of October, 2023.



A handwritten signature in blue ink, appearing to read "U. E. Madeha", is written over the seal.

U. E. MADEHA

JUDGE

20/10/2023

COURT: Ruling is read over in the presence of the Applicant and the Respondent. Right of appeal is explained.



A handwritten signature in blue ink, appearing to read "U. E. Madeha", is written over the seal.

U. E. MADEHA

JUDGE

20/10/2023