

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

MOROGORO

MISC. CRIMINAL APPLICATION NO. 01 OF 2023

(Arising from criminal case no. 115 of 2020 of Ulanga District Court)

JAMES DASTAN MGENDELA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

DATE OF LAST ORDER: 17/01/2023

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MALATA, J.

The applicant, James Dastan Mgendela, filed this application which was registered as Application No. 01/2023 praying for orders that, it be pleased to grant extension of time within which to file notice of intention to Appeal and an appeal out of time.

Briefly the applicant was charged for two offences, shop breaking contrary to section 296 (a) and (b) and second count was stealing contrary to section 265 both of the Penal Code Cap 16 R.E 2019. The Applicant was convicted and sentenced to ten (10) years in prison for the first count and seven (7) years in prison for the second count. Aggrieved thereof, the Applicant issued notice of intention to appeal to the High Court of

Tanzania through Prison Office in charge within the prescribed time of ten (10) days. Immediately thereafter, the applicant was transferred to Kibelege Remand prison and then to Ukonga Central Prison. Upon making follow ups on status of his appeal he noted that, the prison officer did not transmit the notice of appeal to court and the same was misplaced. As such, he decided to apply for extension of time within which to file appeal out of time, thence, the present application.

When this application came for hearing both parties to application were present in court. The applicant appeared in person and the Respondent appeared through Mr. William Dustan learned State Attorney.

In support of the application, the applicant submitted that, since the delay was not caused by his own dilatory conduct, and the reasons were beyond his control he prayed for this court to grant his prayers.

Mr. William Dustan learned State Attorney for the Republic did not oppose application for the reason that, he was satisfied with given reason for delay and that the same is been backed by principles governing extension.

By way of rejoinder, the applicant prayed the application to be granted as it is not opposed by the Republic.

This court has taken consideration of the submission from both parties as well as the reasons advanced by the applicant in support of the application for extension of time. In short, the issue for determination is whether the applicant has shown sufficient cause for delay.

To start with, for an application for extension of time to be granted the applicant must advance good cause for the delay. This position is echoed

through by section 361(2) of the Criminal Procedure Act, Cap 20 R.E. 2019 that reads;

"S. 361 (2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed."

Furthermore, the Court of appeal in the case of **Hamisi Mahona Vs Republic, Criminal Appeal No. 141 of 2017** (unreported) had an opportunity to discuss the thrust of section 361(2) of the CPA and stated that;

"the High Court may, for good cause, admit an appeal". That means, for the court to determine whether it should grant extension of time to file appeal or not, the sole determinant factor is whether or not the applicant has established good cause explaining the delay."

There is no hard and fast rule in defining what it means by the term "**good cause**", The power vested in the Court in extending time must be exercised judiciously; particularly, when determining "good cause" by considering circumstances of each case, In the case of **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd, Civil Application No. 13 of 2010**, (unreported), it was stated:

*"What constitutes good cause cannot be laid down by any hard and fast rules. The term **"good causes"** is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion. "[Emphasis added]"*

From above, the court has power to extend time to do any act where a party has failed to do it within a prescribed time. The said power is discretionary but has to be exercised judiciously. This means that, there must be tangible evidence proving existence of such fact that, the applicant was prevented by genuine reasons or there exist illegalities in the judgment, among others, through which the court can exercise its discretionary mandates to weigh on whether to grant extension or not.

In this application the applicant indicated that he filed the notice within time but the same was not transmitted by the prison officer to the court for filing. He further stated that, after conviction he was transferred to Kibelege Remand Prison and thereafter to Ukonga Central Prison.

In the case of this nature the court's duty is to assess, *inter alia*, if the reasons given amount to good cause for delay and whether the same was beyond the applicant's control. Additionally, it has to consider the governing principles in granting or not this type of application.

Having gone through the evidence on record, this court is satisfied that the assigned reasons amount to good cause as the applicant was in

custody and couldn't have personally done anything but through the prison officer in charge.

The applicant's duty to give notice of intention to appeal within ten days through the prison officer was discharged accordingly. Therefore, no blame lies on the applicant's shoulder. All the appeal documents by the appellant are submitted to court through the Prison Officer in charge and he is the one who bears a duty of transmitting them to court. This is echoed by the court of appeal decision in the case of **Nzeyimana Zeno vs. Republic, Criminal Appeal no. 54 of 2007 (unreported)** where it was held that;

We have also taken note of the fact that since giving notice of intention to appeal on his first day in prison, the appellant's situation has remained in limbo, largely through the frequent prison transfer he was subjected to. The notice has expired, and the time within which to appeal has also lapsed the interests of justice calls for remedial measures in this unhealthy situation.


The appellant as prisoner cannot force or command the prison officer to do what the applicant/appellant wanted to be done. Therefore, the applicant's failure to file his appeal within prescribed time wasn't caused by his dilatory conduct, and hence good cause is shown to this court to grant him extension of time to file notice of appeal and appeal.

All said and done this court therefore grants leave to the applicant to file notice of intention to appeal and appeal out of time. The application is granted on condition that, he file the same within **twenty-one (21) days** from the date of this ruling.

It is so ordered.

Dated at Morogoro this 17th January 2023.




G. P. MALATA
JUDGE
17/01/2023

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