

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB - REGISTRY OF MOSHI

AT MOSHI

MISCELLANEOUS CRIMINAL APPLICATION NO. 952 OF 2024

(Arising from District Court of Moshi in Economic Case no. 4 of 2022)

EMMANUEL DANIEL MASAKI..... APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

9th April, 2024

A.P.KILIMI, J.:

The applicant hereinabove mentioned has moved this court by way of chamber summons under section section 361 (1) (b) and (2) of the CPA Cap 20 R.E 2022 and other enabling provisions of the law, praying for the following orders; First, that, this court may grant leave for the Applicant's appeal be heard out of time. And second, that, any other order(s) and relief (s) this court may deem it fit and just to grant. The applicant has supported this prayer by his duly sworn affidavit.

When the matter came for hearing, the applicant stood himself and submitted nothing but prayed this court to consider his affidavit. The Republic was represented by Mr. Frank Wambura Learned State Attorney.

The applicant in his affidavit avers that, after being convicted and sentenced to serve twenty (20) years in jail at Karanga central prison Moshi by the District court of Moshi at Moshi, he lodged a notice of intention to Appeal within the prescribed time by the law. He then requested the convicting court to furnish the copies of judgement and proceedings so as he may prepare and lodge his appeal. The convicting court supplied to him the requested copies on 16/10/2023 through prison authorities. Upon perusal on them he realizes the same were certified on 17.07.2023 but handed to me on 16/10/2023. Thus, he failed to file an appeal because the time as required by the law was already elapsed. Therefore, he is requesting this court that he is not responsible for the delay of the copies of judgment and proceeding to reach him at the prison, thus is application be allowed.

Mr. Wambura replied that since the applicant is on bars at the prison he has no objection with his application, thus he urged if this court will see it is just for his application be granted.

It is a trite law, in order the Court to extend time as prayed by the applicant, sufficient cause must be shown and further that though granting such an application is in the discretion of the court, the discretion must be exercised judiciously in accordance with rules of reasoning and justice and not according to private opinion. (See **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010 (unreported)).

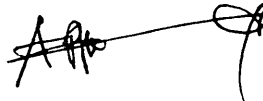
Having considered the reasons advanced by the applicant in his affidavit and since he lodged a notice of intention to Appeal within the prescribed time by the law. The facts that he requested the convicting court to furnish the copies of judgement and proceedings in time, being in bars he has nothing to do except to wait until it reaches him. It is my considered opinion he exercised his due diligence to the process of appeal, consequence of delay was not his fault. Thus, I am settled the application

has merit and it is accordingly granted. The intended appeal should be filed within 30 days from today.

It is so ordered.

DATED at **MOSHI** this 9th day of April, 2024.




A. P. KILIMI
JUDGE

Court: - Ruling delivered today on 9th day of April, 2024 in the presence of Applicant and Mr. Frank Wambura learned State Attorney for Respondent.

Sgd: A. P. KILIMI
JUDGE
9/04/2024