

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[ARUSHA SUB-REGISTRY]

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 9985 OF 2024

(C/f the High Court of the United Republic of Tanzania Arusha sub-registry, Criminal Appeal No. 117 of 2022, Originating from the Resident Magistrates' Court of Manyara at Babati, Criminal Case No. 67 of 2021)

WILLIAM MICHAEL CHAULA APPLICANT

Versus

THE REPUBLIC RESPONDENT

RULING

9th & 9th May, 2024

MWASEBA, J.

The applicant has preferred this application under sections 10 of the Appellate Jurisdiction Act, Cap. 141 [R.E 2002], 361(1)(b) and (2) of the Criminal Procedure Act Cap. 20 [R.E 2019] and 14(1)(2) of the Law of Limitation Act, Cap. 89 [R.E 2019] and any other enabling provisions of the law, moving the court to grant him extension of time to file notice of intention to appeal out of time. The application is supported by an affidavit deposed by the applicant himself. The respondent did not contest the application because there was no counter affidavit filed.

When the application was called for hearing on 09/05/2024, Ms Witness Mhosole, learned State Attorney who appeared for the



respondent Republic, informed the court that she did not intend to contest the application. She therefore supported the applicant that the application be granted because the delay was not attributed by the applicant's own fault. On the other hand, the applicant who appeared in court in person, unrepresented, having learned the State Attorney's concession, he had nothing to submit. He principally insisted that the application be granted. Hearing of the application proceeded *viva voce*.

I have thoroughly examined the affidavit in support of the application and oral submission by the learned State Attorney as well as the applicant, the main issue for determination is whether the delay to file the notice of intention to appeal was attributed with sufficient cause. The powers of the court to extend time for a party to do a particular thing that ought to be done within prescribed time are discretionary, but they are to be exercised judicially. Such powers may only be exercised where it has been sufficiently established that good cause for the delay has been shown. Proof of good cause has been emphasized in various decisions including the Court of Appeal decision in **Esio Nyomolelo and Another v. Republic**, Criminal Application No. 11 of 2015 (Unreported), where the Court stated:

"With respect, Rule 10 of the Rules requires an applicant seeking for extension of time to show good cause before the

Attorney

Court uses its discretion to grant extension of time. The applicant is required to show and explain what prevented him from lodging his/her application within the prescribed time. In so doing, the applicant has to account for every day of the delay caused by him in his affidavit."

Now, the question is whether the applicant herein has furnished sufficient cause for the delay to file the notice of intention to appeal. The applicant in his affidavit in support of the application accounted that after the conviction and sentence, he appealed to this court vide Criminal Appeal No. 117 of 2022, but his appeal was dismissed on 31/03/2023 for lacking merits. Immediately after the appeal was dismissed, he was transferred to Kitai prison in Ruvuma Region. He stated under paragraph 5 that after he made follow up of his notice of intention to appeal, he filled in a form which was processed by Kitai prison and sent to Arusha Central prison. After he made follow ups in Arusha prison, his notice to appeal was nowhere to be found, hence this application. According to the applicant, he was keen to pursue his appeal only that he was delayed by the conduct of the prison officers of Kitai Prison who mishandled his appeal documents.

From the affidavit in support of the application, it is noteworthy that apart from supporting the application, the learned State Attorney was keen to side with the applicant that the delay was not attributed by



*"The learned judge found no good cause for extending the period of appeal. We respectfully fault this finding... Second, having so expressed his intention to appeal, the appellant left the matter in the hands of the prison officer who was duty bound to transmit the Notice of Appeal to the High Court. **The default of the prison officer to forward the Notice of Appeal to the High Court is sufficient ground for extending the period of appeal.** Under the circumstances, we find merit in this appeal."*(Emphasis added)

Triggered by the above demonstration and the authorities referred, I find and hold that the delay by the applicant to file notice of intention to appeal was with sufficient cause. The application is merited, I therefore grant the extension of time sought. The applicant is granted ten (10) days within which to file the notice of intention to appeal to the Court of Appeal of Tanzania from this date.

Order accordingly,

DATED at **ARUSHA** this 9th May, 2024.




N. R. MWASEBA

JUDGE