

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MANYARA**

AT BABATI

MISCELLANEOUS CRIMINAL APPLICATION NO. 38 OF 2023

*(Originating from decision of the District Court of Kiteto at Kibaya in Criminal Case No
49/2020)*

LESILI DANFORDAPPLICANT

Versus

THE REPUBLIC RESPONDENT

RULING

23rd November 2023 & 24th January, 2024

Kahyoza, J.

The applicant, **Lesili Danford** prays to this Court to extend time to lodge a notice of appeal and appeal. He instituted his application by chamber summons supported by his affidavit under section 361(2) of the **Criminal Procedural Act**, Cap 20 R.E. 2019.

The applicant's ground of application is that he delayed to appeal because he applied to the trial court but it did not give him the copy of the judgment and proceedings to enable him to appeal on time.

Brief account is that: the applicant was arraigned in criminal Case No 49/2018 before Kiteto District Court with two counts to wit, rape contrary to section 130(1), (2)(e) and 131 (1) of the Penal Code [Cap. 16 R.E. 2022] and section 60A of the Education Act, [Cap. 353 R.E.

2002]. He was convicted with the offence of rape and sentenced to serve **thirty years'** imprisonment.

Aggrieved, the applicant lodged an application for revision before this Court, Arusha sub-registry. The Court dismissed the application for revision because the applicant had not first exercised the right to appeal. Hence, he lodged this application seeking for leave to appeal out of time.

Has the applicant adduced good or sufficient cause for his delay?

In deed the law requires a person applying for extension of time to exhibit good cause for delay. See section 361(2) of the **CPA**, which provides as follows: -

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

The respondent's State Attorney, Ms. Mwanaidi, vehemently opposed the application. She argued that the applicant adduced sufficient reason to warrant the application to be granted. The applicant's averment that he should not be blamed for missing notice of appeal was meritless. He was bound in law to file a notice of appeal and there was no costs involved in doing so. She added that

the applicant's contention that he delayed to appeal because he was a prisoner was also baseless as a prisoner like any another person is bound to comply with the law. She contended that the applicant was required to account all time of delay. To support her contention, she cited the case of in **Hassan Bushiri v. Latifa Iukio Mashayo**, CAT Civil Application No. 3 of 2007 (unreported), where the Court imposed a duty on litigants who seek to extend time in taking actions to account for each and every day of delay. It stated that-

"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

She argued that the applicant had a duty to adduce sufficient reason for delay and cited the case of **Benjamin Amon v. R.** Criminal application No. 106/11 of 2018 (CAT-Unreported) to support her contention.

I considered the arguments in support of and against the application as well as examining the record. The record vividly shows that the applicant spent time from 2020 prosecuting an application for revision which this Court dismissed in 2022.

The applicant did not state it as the ground to support the application but the record speaks loud in support of that fact. It is

therefore a fact that the applicant delayed to appeal because he was prosecuting an incompetent application for revision. Delay to take legal step while prosecution any proceedings in the court of law amounts to a technical delay which the applicant is not to blame. Courts have held in cases without number that a technical delay **is explicable and excusable**. There is a plethora of authorities such as **Fortunatus Masha v. William Shija and Another** [1997] TLR 154, **Salvand K. A. Rwegasira v. China Henan International Group. Co. Ltd** Civil Reference No. 18 of 2006. In **William Shija and another v. Fortunatus Masha** (supra) the Court of Appeal stated the following -

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."

I examined the record and found that the applicant was convicted upon his own plea of guilty but the procedure is wanting. I was not able to close my eyes to glaring irregularities in the proceedings. I

agree that reading the applicant's affidavit, a conclusion that the applicant adduced no sufficient reason for delay follows like night follows day, however, when the record is reviewed, there are good grounds for extending time.

In the upshot, I find the applicant has adduced good ground to warrant this Court to extend time. Thus, the application is granted. The applicant is given 10 days within which to lodge a notice of appeal and 45 days' leave, from the date of this ruling, to institute the intended appeal.

It is ordered accordingly.

Dated at Babati this **24th** day of **January**, 2024.



A handwritten signature in blue ink, appearing to read "J. R. Kahyoza".

J. R. Kahyoza
JUDGE

Court: Ruling delivered in the presence of the applicant and Ms. E. Malima, State Attorney for the Republic. B/C Ms. Fatina present.

A handwritten signature in blue ink, appearing to read "J. R. Kahyoza, J.". The signature is identical to the one above.

J. R. Kahyoza, J.
24/01/2024