

**IN THE HIGH COURT OF TANZANIA
TANGA DISTRICT REGISTRY AT TANGA
MISCELLANEOUS CRIMINAL APPLICATION NO. 28 OF 2023**

*(Arising from the Judgment of the District Court of Korogwe at Korogwe in Criminal
Case No 04 of 2022 by S. W Mwakalobo)*

GEOFFREY BALTAZAR REUBEN..... APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

K. R. Mteule, J

5/2/2024 & 8/2/2024

This Application arises from the District Court of Korogwe at Korogwe in **Criminal Case No. 28 of 2023**. In the said District Court of Korogwe, the Applicant was charged with the offence of attempted rape contrary to **section 132 (1) and (2) (a) of the Penal Code Cap 16 of 2019 RE**. He was convicted and sentenced to serve 30 years imprisonment. Being dissatisfied, he wants to challenge the decision, but he is time barred. He filed this application seeking for extension of time to lodge the appeal.

In his affidavit, the Applicant deposed facts to narrate how he was stuck in lodging his appeal due to his incarceration and transfer from one



prison in Korogwe to another at Maweni Tanga. His deponed story tells how he indicated his intention to appeal against the decision of the District Court and how he got transferred from the prison before he lodged the appeal. According to the affidavit, his expectation on the prison's officers to help processing his appeal turned into disappointment as he could not get that assistance.

He explained the time he spent in attempting to get extension of time to file the appeal starting with the **Misc Criminal Application No. 32 of 2022** which was struck out for the reason that he only sought extension of time without seeking such extension of time to lodge the notice of intention to appeal. It was due to all these which caused the Applicant to seek for extension of time.

The Respondent filed a counter affidavit challenging the substantive facts deponed by the Applicant. According to the respondent the Applicant has not demonstrated sufficient grounds to warrant grant of extension of time.

The Application was heard by oral submissions. The Applicant reiterated what he deponed in his affidavit that he was sentenced to serve 30 years imprisonment in Korogwe District Court since 14th April 2022. He was transferred from the prison in Korogwe to Maweni. In 2022 he

lodged his Appeal, but he was told that it was time barred. That he started to lodge the application for extension of time. That in 2023 he was told that there was no notice of intention to appeal despite of the fact that he filed the said notice. Having gone to complete all the legal procedures he filed the instant application.

Mr. James Rugaimukamu SA submitted for the respondent. He contended that he is objecting to the application on the ground that since the Applicant confessed to have been sentenced on 14 April 2022 and indicated intention to appeal on 19 April 2022 and filed his application for extension of time on 16/10/2023, then the time is too long. According to Mr. Rugaimukamu, the Applicant has not stated when he was transferred from Korogwe to Tanga prison, and he has not disclosed when he received the copy of judgment.

Citing the case of **Lucas Wambura vs Republic Misc. Economic Criminal Application No. 3 of 2017, HC of Tanzania, Mbeya** at page 5, Mr. Rugaimukamu submitted that the Court quoted the case of **Godfrey Anthony and Ifunda Kisite vs Republic, Criminal Case No. 6 of 2018 Court of Appeal of Tanzania at Mbeya**, where Nsekela JA stated that extension of time is court's discretion but the applicant must give sufficient reasons for the court to exercise the

discretion. In his view, the applicant has not submitted sufficient reasons for the court to grant extension of time. He therefore prayed for the application to be dismissed.

The Applicant made a rejoinder in which he insisted to have timely filed the notice of intention to appeal. He insisted for the court to grant the extension of time.

Having considered parties submission, the main concern is whether the Applicant has advanced sufficient grounds for this court to grant an extension of time.

I agree with Mr. Rugaimukamu on the principle he has cited in the case of **Lucas Wambura supra** that it is the discretion of the court to grant extension of time. I agree further that the discretion must be exercised judiciously basing on the strength of the reasons and argument from the parties. See also **Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007(unreported) particularly the words I quote hereunder:

"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 the applicant must place before the court material which will

move the court to exercise its judicial discretion in order to extend the time."

It is not disputed that the Applicant is a prisoner, and he has limited freedom in dealing with his case. It is further not disputed that he was transferred from prison in Korogwe to Tanga and that he received his copies of judgment and proceedings while already transferred to the prison in Tanga. He has deponed further that he was depending on the prison's authority to facilitate his appeal to be filed timely. According to the Applicant's submission, his first application for extension of time was struck out due to lack of a notice of intention to appeal in the record. The entire scenario demonstrates both technical delay and some other logistical grounds of delay. Technical delay means delay caused due to technical legal issues like the one which caused the striking out of the previous application. It means the applicant has been struggling to pursue the matter but due to legal technical issues, the appeal can't go through.

Although the Applicant did not specify the exact dates of every event, being a prisoner, it is obvious that most actions are out of his own control. What has been stated in the affidavit and in the submission in my view amounts to an indication that the Applicant has been struggling

to have his Appeal filed but could not succeed due to his incarceration and the associated events such as transfer of prison and the striking out of his previous application which constituted technical delay. Therefore, it is my finding that, the Applicant has reasonably accounted for the reasons of delay.

From the foregoing, the Application is allowed. The Applicant is granted extension of time to lodge his appeal within 21 days from the date of this Ruling. It is so ordered.

Dated at Tanga this 8th Day of February 2024.




KATARINA REVOCATI MTEULE

JUDGE

8/2/2024

Court:

Ruling delivered this 8th Day of February 2024 in the presence of James Rugaimukamu State Attorney, and the Appellant present in person.




KATARINA REVOCATI MTEULE

JUDGE

8/2/2024