

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**SONGEA SUB - REGISTRY
AT SONGEA**

MISC. CRIMINAL APPLICATION NO. 38114/2023

(Originating from Tunduru District Court in Criminal Case No. 45 of 2022)

RAZACK USALE SELEMANI APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of last Order: 15/01/2024

Date of Ruling: 31/01/2024

U. E. Madeha, J.

To begin with, the Applicant that is none other than; Razack Usale Selemani, was convicted by the District Court of Tunduru for the offence of stealing by agent contrary to section 278 (b) of the *Penal Code* (Cap. 16, R. E. 2022). He was sentenced to serve five (05) years imprisonment. The Applicant was aggrieved by both conviction and the sentence meted by the trial Court and he lodged this application for extension of time to lodge his notice of intension to appeal and petition of appeal out of time. His application is supported by an affidavit sworn by the Applicant himself.

It is worth considering the fact that, at the hearing of this appeal the Applicant has no representation, whereas Mr. Elipid Tarimo the learned State Attorney represented the Respondent/Republic.

Submitting in support of his application, the Applicant argued that the reason for the delay to file the notice of intention and petition of appeal are due to the fact that, the impugned decision was read in his absence on the 28th day of March, 2024. He added that on that date he was in custody at Nakapanya Police Station where he stayed until 7th August, 2023 when he was transferred at Tunduru Police Station and later on at Tunduru District Court where he became aware that he was convicted and sentenced to serve five years imprisonment. He went on stating that on 9th August, 2023 he filed his notice of intention to appeal and later on petition of appeal but it was struck out since they were filed out of time.

For that reason, he prayed for this Court to grant an order for extension of time to file notice of the intention to appeal and an appeal out of time.

In his reply, Mr. Elipid Tarimo prayed for the Respondent's counter affidavit to be adopted to form part of the proceedings and submitted

further that the Applicant was duty bound to prove his allegations clearly stating the reasons for delaying in filing his notice of intention to appeal and petition of appeal. He added that the facts contained in the affidavit sworn in support of the application requires supporting documents to be attached for this Court to be satisfied that what has been deponed are correct. He argued that in relation to what has been deponed and stated by the Applicant, it was very important to attach a copy of judgement, proceedings and the ruling which struck out his appeal for the reason that it was filed out of time for this Court to be in a good position to know the truth of what has been stated by the Applicant.

Mr. Tarimo argued further that, the Applicant has failed to state even the case number of his appeal which was struck out for being filed out of time making more harder for this Court to find the truth of what has been stated by the Applicant. He contended further that the consequences of failure to attach important document makes this Court to be unable to know whether what has been stated by the Applicant are correct and decide in his favour. To cement his arguments, he cited the decision of the Court of Appeal of Tanzania in the case of **TCCIA Investment Company Limited vs. Dr. Gedion H. Kaunda**, Civil Appeal No. 310 of 2019) [2022]

TZCA 599 (5 October 2022) TanzLII, in which the Court emphasized on the importance of attaching the documents mentioned in the affidavit in order to prove the facts stated by the Applicant and failure to attach makes the Court not to believe what has been stated by the Applicant.

Mr. Tarimo went on stating that one of the factors for an order of extension of time to be granted, the Applicant has to account for each day of delay as it was stated in the case of **Airtel Tanzania Ltd vs. Minister of Light Electrical Installation Co. LTD and Another**, Civil Appeal No. 37 of 2020 (unreported), but in the instant application, the Applicant has failed to account for each day of delay. Basing in his submission, he prayed for this application to be dismissed. In his part, the Applicant has no rejoinder submission.

Having gone through the affidavit, the counter affidavit and the submissions made by the parties in this application, I find the main issue which needs to be determined by this Court is whether the Applicant has advanced good cause to convince this Court to exercise its discretion power to extent time within which the Applicant can lodge an appeal out of time.

It is the established practice of this Court and the Court of Appeal which is the Apex Court in our jurisdiction that, for applications of this nature to succeed the Applicant has to elaborate clearly the reasons for the delay to enable the Court to use its discretion which is to be exercised judiciously. In **Robert Madololyo v. Republic**, Criminal Appeal No. 486 of 2015 [2018] TZCA 346 [14 February 2018; TanzLII], the Court of Appeal of Tanzania, quoting with approval the decision of the Supreme Court of South Africa in **Uitenhage Transitional Local Council v. South African Revenue Service**, 2004 (1) SA 292 (SCA), cautioned that, in an application for condonation for delay the Applicant must furnish a detailed and accurate explanation of the causes of the delay to enable the Court to understand the situation and assess the responsibility. Also, in the case of **Republic v. Yona Kakonda & 9 Others** (1985) T. L. R 84, it was held that:

"In deciding whether or not to allow an application to appeal out of time, the Court has to consider whether there are sufficient reasons not only for the delay but also sufficient reasons for extending time during which to entertain the appeal."

In the present application, the reason advanced by the Applicant is to the effect that, the judgment was delivered in his absence on 28th March, 2023 and he became aware on 7th August, 2024 when he was sent at Tunduru District Court. Also, he has stated that he filed his appeal but it was struck out since it was filed out of time.

The above allegations have been critically challenged by Mr. Elipid Tarimo, the learned State Attorney for the Respondent on the ground that the Applicant has failed to attach necessary documents to support his allegations to convince and make this Court believe that what has been stated by the Applicant are correct.

On my side, taking into consideration of the reasons for delay as stated by the Applicant in his affidavit in support of the application and the submissions made during trial, I concur with the learned State Attorney for the Respondent that the Applicant's failure to attach important documents to prove his allegations makes this Court to find that he has failed to convince this Court to grant an order for extension of time within which the Applicant can file notice of intention to appeal and petition of appeal out of time.

In the circumstance of this application, I find the Applicant has failed to advance good reason to enable this Court to exercise its discretion power to grant an order for extension of time for the Applicant to file an appeal out of time and I hereby dismiss this application for want of merit. It is so ordered.

DATED and DELIVERED at **SONGEA** this 31st day of January, 2024.



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U. E. MADEHA

JUDGE

31/01/2024

COURT: Ruling is read over in the presence of the Applicant and Mr. Gaston Mapunda, the learned State Attorney for the Respondent. Right of appeal is explained.



A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke.

U. E. MADEHA

JUDGE

31/01/2024