

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

MUSOMA SUB – REGISTRY

AT MUSOMA

MISC. CRIMINAL APPLICATION NO. 14457 OF 2024

REF NO. 202405292000014457

*(Originating from Criminal Case No. 87 of 2023 at Resident Magistrate’s Court
of Musoma at Musoma)*

BETWEEN

MSAFIRI MORIS NYAKUTWI APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

10th & 10th June, 2024

M. L. KOMBA, J.

This is an application of extension of time within which the applicant can appeal out of time against the decision of Resident Magistrate’s Court of Musoma at Musoma in Criminal Case No. 87 of 2023. The application is premised under section 361 (2) of the Criminal Procedure Code [CAP 20. R.E 2019] and section 14 (1) of the Law of Limitation Act [CAP 89 R.E 2019]. An affidavit sworn by the applicant, **Msafiri Moris Nyakutwi** is enclosed together to support the applicant’s application.

The respondent did file nothing to counter the applicant’s application.

Summarily, the applicant herein was arraigned before the Resident Magistrate's Court of Musoma and convicted with an offence of incest by male contrary to Section 158 (1) (a) of the Penal Code [CAP 16 R.E 2022]. He was then sentenced to 30 years imprisonment.

As he was not pleased by the decision of the Resident Magistrate's Court of Musoma, the applicant lodged an appeal before this court. But, due to unfamiliarity with eCase Management System of Judiciary of Tanzania which was currently in operation, the applicant, with aid of prison officer filed his appeal in wrong admission system which resulted his appeal to be struck out with an order to re-file the same on proper channel.

Since the applicant discovered that he is out of prescribed time to lodge his appeal in accordance with the law, he brought this application at hand beseeching this court to grant him an extra time to file his appeal correctly.

During the hearing of this appeal, the applicant appeared solo, fended for himself whilst on the other hand Mr. Jonas Kivuyo, State Attorney, represented the respondent.

In his precise submission, the applicant stated that he prayed for time so that he can appeal out of time since the previous application was struck out due to system error and it was out of his control.

In responding, Mr. Kivuyo was hastened to state that the applicant was lodged his appeal on time but he mistakenly lodged the same in Misc. Application section instead of Appeal section which led to struck out. He proceeded that when the applicant was given 14 days to refile, he filed written submission instead of an appeal. Being said so, Mr. Kivuyo leaves the rest to the court.

Following the short submission by both parties, I am now called upon to determine whether the applicant registered a sufficient reason for this court to grant him an extension of time.

First of all, I would like to elaborate that, since the respondent did not file counter affidavit to contest the application, she admitted the facts. See the case of **Alhaji Abdallah Talib vs Eshakwe Ndoto Kiweni Mushi** [1990] T.L.R 108. However, failure by the respondent to file counter affidavit is not *ipso facto* that the application will be allowed as of right. See **Dominic Yohana vs Salma Mshite (Civil Application 120 of 2020) [2021] TZCA 216 (31 May 2021)**.

It is settled law that an application for extension of time will only be granted upon the applicant showing good cause for the delay. There is a plethora of authorities on this point. See **Tanzania Coffee Board vs Rombo Millers Ltd**, Civil Application No. 13 of 2015, **Sebastian**

Ndaula vs Grace Rwamafa (legal personal representative of Joshua Rwamafa), Civil Application No. 4 of 2014, **Yazid Kassim Mbakileki vs CRDB (1996) Ltd Bukoba Branch & Another**, Civil Application No. 412/04 of 2018 and **Tanzania Bureau of Standards vs Anitha Kaveva Maro**, Civil Application No. 60/18 of 2017 (all unreported), to mention but a few.

Applicant in this case shoulder all of his blame on court eCase Management System, that his appeal was wrongly filed. Luckily, his averment was supported by the respondent counsel who also is the system user.

It is true that the Judiciary of Tanzania is now in revolution of using advanced technology in order to improve and simplify the services to the community. And currently we have eCase Management System which is used to file and determine cases. We are no longer prefer the ordinary paper system we used to. In short, we are running paperless now.

Since we are continuing to improve the system for better performance, I also observed regular mistakes done from both ends (service providers and customers). As we are all still adjusting on better use of the system, I am not surprised with a mistake done by the applicant. Worse enough, he is not directly capable to access the system since he is in prison. The

fact that the applicant is a prisoner, his action and movements solely depend on the mercy of the officer-in-charge of the prison and therefore it is unfair to expect much from a prisoner. See **Maneno Muyombe & Another vs Republic**, Criminal Appeal No. 435 of 2016 and **Buchumi Oscar vs Republic**, Criminal Appeal No. 295 'B' of 2011 (both unreported).

The fact that applicant is in prison, to me, is the good reason for court to warrant him extension of time to file his appeal correctly. It is serious factor for a person who is in prison where his movement and communication are restricted.

In the event analysed above, I allow the application. The applicant is given 30 days from the date of this ruling to file his appeal on the system in a correct way.

It is so ordered.



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M. L. KOMBA
JUDGE
10th June, 2024