

IN THE HIGH COURT OF TANZANIA

(IRINGA SUB - REGISTRY)

AT IRINGA

MISC. CRIMINAL APPLICATION NO. 553 OF 2024

***(Originating from District Court of Mufindi at Mafinga in Criminal
Case No. 02 of 2023)***

ISACK LEONARD MWINUKA @ JIMMY MKWELAAPPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

04/03/2024

LALTAIKA, J.

The applicant herein **ISACK LEONARD MWINUKA @ JIMMY MKWELA**, is seeking extension of time within which he can lodge his intention to appeal out of the statutorily permitted time. The application, supported by an affidavit of the applicant is strongly resisted by way of a counter affidavit deposed by Mr. Majid Matitu, learned State Attorney for the Respondent.

When the application was called for hearing earlier today, the applicant enjoyed legal services of **Mr. Leonard Sweke**, learned Advocate. The

Respondent on the other hand appeared through Mr. Majid Matitu, learned State Attorney.

Mr. Sweke, learned Advocate, arguing in support of the application, informed the court that the application emanated from **Criminal Case No 2 of 2023** of the District Court of Mufindi, with the decision delivered on 1/11/2023.

Before proceeding, he requested to adopt the Affidavit and prayers presented in the chamber summons. He indicated that the applicant had been an accused in the mentioned case, convicted for theft under sections **258(1) and 265 of the Penal Code Cap 16 RE 2022**, and sentenced to seven years in jail forthwith. Mr. Sweke noted, with some degree of emphasis, that the applicant had no legal representation during the trial.

While in jail, Mr. Sweke reasoned, the applicant attempted to file a notice of appeal but faced delays due to his situation as a prisoner. Consequently, the 10-day period for filing the notice lapsed on 10/11/2023. Upon realizing the delay, he sought assistance from a Warden named Alfred L. Siwale, who aided him in preparing the current application, finalized on 30/12/2023. The process of filing the application in court commenced, **and due to changes in e-filing requirements**, success was only achieved on 7/2/2024. These events accounted for the delay in filing the application on time and lodging the intention to appeal.

Mr. Sweke emphasized that the delay was not due to laziness but rather circumstances beyond the applicant's control. Referring to section **361(2) of the Criminal Procedure Act Cap 20 RE 2022**, he pointed out

that the court was empowered to grant or refuse an extension, provided valid reasons were presented. Citing the cases of **FORTUNANTUS MASHA v. WILLIAM SHIJA AND ANOTHER** [1997] TLR 154 and **KALUNGA & Co. ADVOCATES v. NATIONAL BANK OF COMMERCE** [2006] TLR 235, Mr. Sweke highlighted the precedent indicating that when an applicant presents sufficient reasons, the court should grant such an application. Consequently, he prayed for the court to extend the time for the applicant to file his notice of intention to appeal and proceed with the appeal process.

Mr. Matitu learned State Attorney, after hearing the applicant's counsel, expressed his intention to adopt the counter affidavit as part of the court proceedings. He conveyed strong objection to the application, asserting that the applicant had not provided sufficient reasons. Mr. Matitu highlighted that the impugned judgment was delivered on 1/11/2023, while the applicant filed the application on 7/2/2024, resulting in a delay of 90 days, which he deemed unreasonable.

Referring to the case of **MUSE ZONGORI KISELE v. RICHARD KASIKA MUGENDI and OTHERS** Civil App No 244/1 of 2019, Mr. Matitu cited the Court of Appeal's explanation that each day of delay must be accounted for in cases of delay. He further noted that another reason presented in the applicant's affidavit, delay in receiving proceedings and judgment, was not required by law under section 361(1)(a) of the CPA (*supra*).

Mr. Matitu argued that no court could detain a judgment for more than 90 days, emphasizing that there was no evidence to suggest that the legal

department at **ISUPILO PRISON** had been too occupied to prepare a notice during this period. He also informed the court of the monthly visits conducted by the National Prosecution Services (NPS) to all prisons and advised prisoners to ensure timely filing of documents.

The learned State Attorney prayed for the rejection of the application on the grounds that the delay exceeded 90 days without valid reasons, citing the case of **BASHIR ALLY v. ANYEGILE ANDENDEKISYE MWAMALUKA and 3 OTHERS** CIVIL APPEAL NO 49 of 2021 CAT, Mbeya p.6. He argued that being a prisoner was insufficient justification, as prisoners could submit documents to a prison officer as per section 363 of the CPA (supra). Mr. Matitu also pointed out the presence of legal officers stationed in prisons and suggested that 90 days were excessively long, further asserting that a notice could be filed without attachments.

Mr. Sweke, in a brief rejoinder, expressed his insistence that the applicant had provided plausible reasons. He argued that a prisoner lacked autonomy without the consent of the wardens and couldn't make follow-ups. He highlighted uncertainties regarding the actions of prison officers and the geographical distance of the prison. Additionally, he mentioned an issue requiring an account for which the applicant had no access.

Mr. Sweke emphasized that the 90-day delay fell within the period the applicant entrusted his application to the prison warden, making it challenging for the applicant to account for each day. He stressed that prisoners couldn't personally follow up. Regarding the cases cited by the learned State Attorney, Mr. Sweke stated they were distinguishable from the

current matter. He appealed to the court for mercy, asserting that the applicant shouldn't be punished for circumstances beyond his control.

I have carefully considered the arguments presented by both parties. I find several compelling reasons to accept the applicant's request for an extension of time to file the notice of intention to appeal.

Firstly, it is evident that the applicant faced significant challenges in filing the notice of appeal within the prescribed timeframe. The applicant, being a prisoner, encountered obstacles beyond his control, including the requirement for consent from prison wardens and the inability to personally follow up on the progress of his case. These factors contributed to delays in the filing process.

Secondly, the applicant has provided plausible reasons for the delay, including difficulties in accessing necessary documents and procedural changes such as the requirement for an account for e-filing. The applicant entrusted his application to the prison warden within a reasonable timeframe, and it is understandable that accounting for each day of delay would be challenging under the circumstances.

Furthermore, the cases cited by the opposing counsel are distinguishable from the present matter. Each case must be considered on its own merits, and in this instance, the unique challenges faced by the applicant justify granting an extension of time.

Said and done, application for extension of time is hereby granted.
The applicant to file his NOTICE OF INTENTION TO APPEAL within 10 days
and a PETITION OF APPEAL within 45 days from the date of this ruling.

It is so ordered.



A handwritten signature in black ink, appearing to read "E.I. Laltaika".

E.I. LALTAIKA

JUDGE

04.03.2024

SLIB-REGISTRY

Court

Ruling delivered under my hand and the seal of this court this 4th day of
March 2024 in the presence of **Mr. Majid Matitu** learned State Attorney for
the Respondent and **Mr. Leonard Sweke** learned Advocate for the
Applicant.



A handwritten signature in black ink, appearing to read "E.I. Laltaika".

E.I. LALTAIKA

JUDGE

04.03.2024