

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB – REGISTRY OF MOSHI
AT MOSHI
CRIMINAL APPLICATION NO. 39291 OF 2023**

BABUELY YAHAYA MONGIAPPLICANT

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTION RESPONDENT

RULING

19th March, 2024.

A.P. KILIMI, J.:

The applicant has preferred this application in this court vide section 379(2) of the Criminal Procedure Act Cap 20 R.E. 2022 and any other enabling act, praying two years; first be granted extension of time to file Notice of Appeal out of time and second be granted extension of time to file the intended appeal out of time.

Together with above prayers, he has supported his application by his duly sworn affidavit.

When this matter came for hearing applicant stood himself unrepresented whereas the respondent was represented by Ms. Imelda Mushi, learned State Attorney.

In supporting his application, the applicant argued that he has prayed the two prayers above because, the date he was told to attend at the court on 29/01/2023 was on Sunday, also another date he was told to be in court was on 10/5/2023, but when he reached in court he was told his case was dismissed on 9/5/2023 for want of prosecution, then he started to make follow up of copy of proceeding and order.

Responding the above allegation, Ms. Imelda Mushi told this court that the case was dismissed on 9/5/2023 after the applicant failed to attend four time, as per record it was on 28/2/2023, 15/3/2023, 11/4/2023 and lastly on 9/5/2023 when the matter was dismissed.

Ms. Imelda further argued that in applicant's affidavit there are only reasons for appeal out of time and not that of filing notice taking regard notice of appeal does not require any copies of proceeding to be filed. Also she added copy of proceeding was certified on 11/5/2023, thus obtaining on 29/11/2023 by the applicant shows how he was negligent to make a follow up, therefore the learned state Attorney prayed this application be dismissed for want of merit.

I have considered the rival arguments of the above, only one issue appears pertinent to dispose this matter before me, and that is nothing but whether there is sufficient grounds to warrant extension of time.

According to the applicant prayer, he has prayed two distinct prayers but related one, this is because both emanates from one provision which is section 379 (1) of CPA Supra, however, the law is very clear the appeal cannot be filed if the notice of appeal has not been filed.

In his affidavit as correctly said by learned State Attorney no reasons stated for filing a notice of appeal out of time, and I concede with her that no need of copy of proceeding required to file notice of appeal, that is why when you read provision of section 379(1) (a) of CPA does not provide for exclusion clause as provided under section 379 (1) (b) of CPA which provides for the time requisite for obtaining copy of proceeding, Judgment or Order.

As I said above the law require sufficient reasons must be establish to enable the court exercise its discretion to grant extension of time. (See **Usufu Same and Hawa Dada vs. Hadija Yusufu** Civil No. 1 of 2002 CA). These reasons also account for each delay. (See **Dar-es-Salaam**

City Council vs. S. Group Security Co. LTD Civil Application No. 218 of 2016 (unreported).

In view of the authority above, the facts that the applicant did disclose nothing on why he was late to file notice of appeal in his affidavit cannot be substituted by his oral submissions, this is because oral submissions are not evidence but merely expound of presented evidence and the governing law. (See **Morandi Rutakyamirwa vs. Petro Joseph** (1990) T.L.R 49 and **Registered Trustees of the Archdioces of Dar-es-Salaam versus The Chairman, Burufu Village Government and 11 Others** Civil Appeal No. 149 of 2009 (unreported)).

In the circumstance therefore, this application stands without supporting reasons for the cause of delay for filing notice of appeal which must be lodged first before appeal itself, thus allowing to file an appeal without notice will be futile.

In the premise, I find the whole application unsubstantiated and consequently I proceed to struck it out forthwith.

It is so ordered.

DATED at **MOSHI** on 19th day of March, 2024.




A.P. KILIMI
JUDGE

Court: - Ruling delivered today on 19th day of March, 2024 in the presence of Ms. Imelda Mushi and Mr. Frank Wambura State Attorneys for the respondent and Applicant also present.

Sgd: A. P. KILIMI
JUDGE
19/03/2024