

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[ARUSHA SUB-REGISTRY]

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 41 OF 2023

(Originating from the District Court of Karatu, Criminal Case No. 190 of 2022)

THEOPHIL SALAHO APPLICANT

Versus

THE REPUBLIC RESPONDENT

RULING

15th & 15th March 2024

MWASEBA, J.

The applicant has preferred this application under **Sections 10 of the Appellate Jurisdiction Act**, Cap. 141 [R.E 2002] and **361(1)(b) of the Criminal Procedure Act**, Cap. 20 [R.E 2019], moving the court to grant him an extension of time to file a petition of appeal out of time. The application is supported by an affidavit of the applicant. The respondent did not file a counter affidavit; hence the application was uncontested.

When the application came for hearing on 15/03/2024, the applicant appeared in person unrepresented, while the respondent Republic was represented by Mr. Philbert Msuya, learned State Attorney. The hearing proceeded orally.



"With respect, Rule 10 of the Rules requires an applicant seeking for extension of time to show good cause before the Court uses its discretion to grant extension of time. The applicant is required to show and explain what prevented him from lodging his/her application within the prescribed time. In so doing, the applicant has to account for every day of the delay caused by him in his affidavit"

The question is whether the applicant has furnished sufficient cause for the delay to warrant the extension of time sought. The applicant has pleaded under paragraph 3 of the affidavit in support of the application that he lodged the notice of appeal on 07/01/2023. Under paragraph 4, he asserted that the judgment was delivered on 05/01/2023. He further asserted under paragraphs 5 and 6 that he was availed with the trial court proceedings and judgment on 31/03/2023 and lodged his appeal on 08/04/2023. Under paragraph 8, he pleaded that he could not lodge his appeal timely because he is a prisoner whose facilitation of the appeal depends solely on the prison authorities.

At the outset, apart from the fact that the application is uncontested, the applicant has shown that the delay in filing the appeal was not his negligence. In the first place, he was prompted to file the notice of appeal just two days after he was convicted and sentenced. He could not file the appeal on time because he was delayed to be supplied



As pointed out, the application was uncontested because the respondent did not file the counter affidavit. Even at the hearing, the learned State Attorney intimated that he does not intend to contest the application. He supported the application on the account that the applicant had already filed notice of appeal. On his part, the applicant, being lay person had nothing to submit apart from appreciating that the application be granted for being uncontested.

I have carefully examined the affidavit in support of the application. The main issue for determination is whether the delay in filing the petition of appeal was with sufficient cause.

This court is vested with discretionary powers to extend the time for a party to do what ought to be done in time, but such discretion is judicial, so it must be exercised judicially. The power of the court to extend time may only be exercised where it has been sufficiently established that sufficient cause for the delay has been shown. What amounts to sufficient cause and how the discretionary powers can be exercised was the subject of discussion in many cases, including the Court of Appeal decision in **Esio Nyomolelo and Another v. Republic**, Criminal Application No. 11 of 2015 (Unreported), where the Court stated:



with copies of proceedings and judgment by the trial court, until 31/03/2023 when they were eventually availed to him. After being availed with the said documents, he did not stay idle; he quickly and within time filed his appeal a week later, on 08/04/2023, which was subsequently found time-barred.

Indeed, I entertain no doubt that the applicant diligently pursued what he believed to be his right. The only reason for being overdue was attributed to the trial court's failure to furnish him with copies of proceedings and judgment within time. The law is settled that in computing the period of limitation, the time requisite taken for obtaining copies of proceedings, judgment, or order appealed against shall be excluded. The Court of Appeal in the case of **The Director of Public Prosecutions v. Barick Enos Mwasaga**, Criminal Appeal No. 472 of 2019 (reported TanzLii), had apposite time to reaffirm that position. It was held inter alia that:

*"As already stated, the parties are agreed that a petition of appeal must be filed within forty-five days of the date of delivery of the impugned judgment; that is, the date of acquittal, finding, sentence or order. They are also at one that in computing the forty-five days of limitation, **time used for obtaining the proceedings, judgment or***



order sought to be appealed against, shall be excluded."(Emphasis added)

The applicant falls squarely under the above rule. Further, the applicant, being in prison, whose appeal depends solely on the prison officers to process, cannot be held responsible for the delay. That said, it is my considered view that the delay in filing the appeal was attributed by sufficient cause to warrant the applicant the extension of time sought.

Consequently, I find merits in the application and allow it as prayed. The applicant is granted thirty (30) days from the date of this ruling to file his petition of appeal.

Order accordingly.

DATED at **ARUSHA** this 15th day of March 2024.




N. R. MWASEBA

JUDGE