

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MTWARA

AT MTWARA

MISC. CRIMINAL APPLICATION NO. 39999 OF 2023

HASSANI MUSSA NAMBANGA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

26th & 26th January, 2024

MPAZE, J.:

On the 29th May, 2023, Hassani Mussa Nambanga, the applicant herein was found guilty of the offence of cultivating bhangi contrary to Section 11 of the Drug Control and Enforcement Act, [cap 95 RE 2019] vide Criminal Case number 43 of 2023 of the District Court of Ruangwa at Ruangwa.

The applicant was sentenced to serve 30 years imprisonment. Dissatisfied with the decision and sentence the applicant lodged a notice of intention to appeal to this court within the time. However, he continued to wait for copies of the proceedings and judgement, which he eventually received after elapse of 45 days for filing an appeal.

Following the expiration of the prescribed time to appeal, the applicant had no other means than filing this application along with his

affidavit seeking this court to grant him an extension of time to file an appeal out of time. This ruling now is in respect of this application.

When the matter was called on for hearing today, the applicant appeared in person without legal representation, while the Republic was represented by Mr. Justus Zegge, State Attorney.

Submitting in support of the application, the applicant asked the court to adopt his affidavit as part of his submissions. He added that he received copies of the proceedings and judgment on 30th August, 2023. Unfortunately, by that time, the deadline for filing the appeal had already passed. As such, he was unable to directly lodge his petition of appeal before filing this application.

Mr. Zegge, State Attorney, supported the application, on the ground that the applicant has advanced sufficient reason.

From the submission by the applicant, the question is, whether the applicant has advanced sufficient reason for the application to be granted.

Upon examination of the applicant's affidavit and submission, it is asserted that the reason for the delay stems from a failure to receive timely copies of the judgment and proceedings.

Section 361 (1) (b) of the Criminal Procedural Act, Cap 20 RE 2022 provides;

'Subject to subsection (2), an appeal from any finding, sentence or order referred to in section 359

(b) has lodged his petition of appeal within forty-five days from the date of the finding, sentence or order,
*save that in computing the period of forty-five days the **time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded.***

The power of the Court to enlarge the time for extension of time as stated by the applicant is derived from section 361 (2) of the CPA which provides:

*'The High Court may, **for good cause,** admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.'*

Based on this provision, there is no doubt that, for application of an extension of time to succeed, the applicant has to advance sufficient reasons for the court to exercise its discretionary powers. What constitutes a sufficient reason and good cause will depend on the circumstances of each case.

The reason advanced by the applicant for an extension of time is due to the delay in being supplied with copies of judgment and proceedings, I might say right away here that, this is not a sufficient

reason, as the law is so clear that time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded he need not to apply for extension of time relying on delay of receipt copies of proceedings or judgement.

In the case of **Director of Public Prosecutions v. Mawazo Saliboko @ Shagi**, Criminal appeal No 384 of 2017, (unreported) when interpreting section 379 (1) (b) of the CPA which is a replica of section 361(1) (b) of the same Act the Court had this to say;

' We are therefore settled that the time for obtaining a copy of the proceedings and judgement for appeal purposes has been excluded by the law in terms of the proviso to section 379(1) (b) of the CPA. The appellant was therefore entitled to file his appeal within 45 days after receipt of the copy of the proceedings and judgment. He need not apply for an extension of time to do so...'

Based on this finding the applicant was supposed to file his petition of appeal within 45 days from the day he obtained the copies of proceedings and judgement.

As a general rule, 45 days start running from the day when the judgement is delivered, however, if the intended appellant is delayed in obtaining copies which he intended to appeal against, 45 days will start reckoning from the moment he received those copies.

Looking at the records, it will be noted that, the application has been brought 89 days from the date when the applicant received the copies of proceedings and judgement that he is appealing. This is what made me rule out that the applicant has not shown sufficient reason. The applicant ought to explain why he was late for 89 days to lodge his petition of appeal from when he received copies of proceedings and judgment.

Despite the applicant's failure to establish sufficient reasons for the court to grant the application, the court finds it will not be in the interest of justice if it decides to strike out the application as it will result in endless filing of applications by the applicant. There must be an end of litigation, by allowing this application will make the end of application of this nature by the applicant.

Notably, the applicant is an inmate, heavily dependent on the prison's officers' support to file his appeal, for this reason, the court has no other choice than to allow the application and extend the time within which to lodge the Appeal against the decision of Criminal Case No. 43/2022 of the District Court of Ruangwa at Ruangwa. The Appeal be filed within 30 days from today.

It is so ordered.

Dated at Mtwara this 26th January, 2024.



M. B. Mpaze
Judge

Court: Ruling delivered in the presence of the appellant in person and
Mr. Justus Zegge State Attorney for Republic.



M.B. Mpaze
Judge
26/01/2024