

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. CRIMINAL APPLICATION NO. 23 OF 2020

(Application for extension of time to lodge notice of Appeal and Appeal in the Court out of time arising from the judgment of the District Court Nyamagana before Hon. Mhina – (RM) in the Criminal Case No. 422 of 2006)

HUSSEIN RAMADHAN BEKAAPPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

04 & 10.06.2020

RUMANYIKA, J.:

The application for extension of time within which Hussein Ramadhan Beka (the applicant), with respect to the 22/11/2006 conviction and custodial sentence of thirty (30) years for the offence of armed robbery to lodge appeal is brought under Section 316 (1) and (2) of the Criminal Procedure Act Cap 20 RE. 2002. It is supported by affidavit of Hussein Ramadhani Beka whose contents essentially the applicant adopted during the hearing. Mr. Robert Kidando learned state attorney appeared for the respondent Republic.

Following the global outbreak of the Coronavirus pandemic and pursuant to my order of 7/5/2020 the parties were present online, by way of audio teleconferencing I heard them through mobile numbers 0735 706 035 and 0767 262 492 respectively.

The applicant submitted that he did not file a notice of appeal due to circumstances that prevailed then as he fell sick in the same November 2006, his 1st appeal was dismissed for being time barred, he appealed successfully to the Court of Appeal of Tanzania but was sent back hereto court hence the instant application. That is all.

Mr. Robert Kidando learned state attorney for good cause confessed to have filed no counter affidavit, he therefore waived their right to argue points of fact but only points of law (1) that the applicant's assertion that the latter was late due to sickness and for that reason he remained back being hospitalized for such a long period it was, but after thought much as also the supporting affidavit was silent that the delay wasn't caused by the prison authorities either (2) that the lapse of 14 good years was not justified because without explanation the applicant lodged the present application on 1/6/2020. That even if one counted it from 30/12/2013 when, on time bar basis the applicant's appeal was dismissed by this court, yet still he was, without explanation seven (7) years late. We humbly submit that the application be dismissed the learned state attorney further contended.

The issue is whether the applicant has assigned a sufficient ground for extension of time. The answer is no for **three main reasons**; shortly after he was convicted and sentenced in 2006, although he didn't tell when exactly he fell sick and got well, the applicant may have had fallen sick and he remained back hospitalized for a decade plus yes, but the supporting affidavit did not even impliedly realize the crucial fact. Unlike in any other cases where evidence was given **viva voce**, formal

applications are proved with facts deposed in the supporting affidavits. I would agree with the learned state attorney that the applicant's complaint of having had fallen sick and therefore the delay it was afterthought leave alone his failure to account for each day of the delay of 14 or 7 years the minimum. **Two**; without running risks of putting the words into his mouth, from its inception the applicant may have been satisfied with it all but for his late in the day paradigm u- turn afterthought which has never been a sufficient cause or ground for extension of time. **Three**, unusually though the applicant may have presented an oral notice of appeal to the prison authorities but the fact was not born out in the supplementary affidavit of the in charge Butimba central prison.


The devoid of merits application is dismissed. It is ordered accordingly.

Right appeal explained.


S. M. RUMANYIKA
JUDGE
07/06/2020

The ruling is delivered under my hand and seal of the court in chambers this 10/6/2020 in absence of the parties with notice.




S. M. RUMANYIKA
JUDGE
10/06/2020