

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC. CRIMINAL APPLICATION NO.16 OF 2021

(Arising from Misungwi District Court in Criminal Case No. 72 of 2020)

HAPPY JOSEPH @SENGU APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Last Order: 16.06.2021

Ruling Date: 16.06.2021

A.Z.MGEYEKWA, J

The applicant application is brought under Section 361(1) and (2) of the Criminal Procedure Act, Cap.20 [R.E 2019]. The order sought is for extension of time to lodge a Notice of Appeal out of time to appeal before this court. The application is supported by an affidavit deponed by one HAPPY JOSEPH @SENGU, the applicant.

The application was argued vide audio teleconference on 16th June, 2021 whereas the applicant appeared in person unrepresented and the Republic had the service of Ms. Sabrina Chogoghwo, learned State Attorney.

The applicant was brief and straight to the point, he urged this court to adopt the affidavit and grant her application for an extension of time to file a Notice of Appeal before this court out of time.

Responding, Ms. Sabrina conceded with the applicant's application for the reason the circumstances that led the applicant to the delay were out of her control. She referred this court to the applicant's affidavit and enlightens this court that, on 11th June, 2020 the applicant was convicted and imprisoned to serve 6 years in prison. She went on to state that while in jail, the applicant appended her thumbprint in one of the documents believing that it was a Notice of Appeal, later she realized that the Notice of Appeal was never filed. She went on submitting that, even the head of prison has attached his affidavit commenting on the applicant submissions that the Notice of Appeal was not filed.

She retired submitting that she does not object to the applicant's prayers is the omission was out of her control. She urged this court to be

guided by the requirement of the law as stipulated under section 361 (2) of the Criminal Procedure Act, Cap.20 [R.E 2019] that the applicant has state good cause for her delay.

In a brief rejoinder, the applicant insisted that she was not aware that the Notice of Appeal was not lodged in this court. She urged this court to grant her application.

I have given careful consideration to the arguments for the application herein advanced by the applicant and the respondent. The central issue for consideration and determination is whether sufficient reasons have been advanced by the applicant to warrant the extension of time to file a Notice of Appeal before this court. The court's power for extending time is both wide-ranging and discretionary but it is exercisable judiciously upon sufficient reasons being shown.

It may not be possible to lay down an invariable or constant definition of the phrase 'sufficient reason' but the court consistently considers factors such as the delay were with sufficient cause, the degree of prejudice, if any, that each party stands to suffer depending on how the court exercise its discretion; the conduct of the parties, the need to balance the interest of a party who has a constitutionally underpinned right of appeal.

The Court of Appeal of Tanzania has vibrantly insisted in its decisions that the grant must be with sufficient reasons. In the case of **Blueline Enterprise Ltd vs. East Africa development Bank** Misc. Civil Cause No. 135 of 1995, the Court of Appeal of Tanzania held that:-

"...it is trite law that the extension of time must be for sufficient cause and that the extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, upon sufficient cause being shown which has to be objectively assessed by the court..."

Equally, the Court of Appeal of Tanzania in the cases of **Republic v Yona Kaponda & 9 Others** [1985]) TLR 84, and **Osward Mwarabu Mwanzirubi vs Tanzania Fish Processors Ltd** Civil Application No. 13 of 2010, the Court of Appeal of Tanzania held that: -

"...what constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is the relative one and is dependable upon the circumstances of each case. It is upon the party seeking the extension of time to provide the relevant material to move the court to exercise its discretion."

Reading the appellant's affidavit, specifically paragraphs 3, 4, 5 and the applicant has narrated the circumstances underpinned her intention to file the Notice of Appeal to include her attempt to thumbprint documents which in her knowledge was a Notice of Appeal. As rightly stated by Ms. Sabrina that the omission of filing the Notice of Appeal was out of her control. In my determination, therefore, from what is stated in the applicant's affidavit, it is my findings that the applicant intended to pursue her appeal and trying to find justice from the day she was convicted and sentenced. Unfortunately, bearing to the prison environment, she found herself out of time. Borrowing the wisdom in the case of **Oswald Mwarabu Mwanzirubi v Tanzania Fish Processors Ltd**, Civil Application No. 13 of 2010, the Court of Appeal of Tanzania held that: -

"...what constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is the relative one and is dependable upon the circumstances of each case. It is upon the party seeking the extension of time to provide the relevant material to move the court to exercise its discretion."

Based on the above authorities, I am satisfied that the applicant has advanced sufficient reasons to warrant this court to grant her application. I have also considered the fact that appeal is not only a statutory right but a constitutional right, of which a person cannot be lightly denied when the higher court is there to determine the applicant's rights.

For the above-stated reasons, I proceed to exercise this court's discretion and extend the time for the applicant to file a notice of appeal before this court. The applicant shall file the Notice of Appeal within three months from the date of this order.

Order Accordingly.

Dated at Mwanza this 16th June, 2021.




A.Z. MGEYEKWA

JUDGE

16.06.2021

Ruling delivered on the 16th June, 2021 via audio teleconference whereas the applicant and Ms. Sabrina, learned State Attorney were remotely present.

A.Z. MGEYEKWA

JUDGE

16.06.2021