

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

MISC. CRIMINAL APPLICATION No. 89 OF 2019

*(Arising from the High Court of Tanzania in Criminal Appeal No. 64 of 2010
Original criminal Case No. 5 of 2010 of the Resident Magistrate Court at
Mwanza)*

REUBEN JUMA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Last Order: 24.02.2020

Date of Judgment: 24.02.2020

A.Z. Mgeyekwa, J

The applicant has instituted an application which is brought under Section 11 (1) of the Appellate Jurisdiction Act, Cap 141. The order sought is for extension of time to file a Notice of Appeal out of time to appeal to the Court of Appeal of Tanzania. The application is supported by affidavit deposed by Reuben Juma.

In the meantime, I deem it apposite to explore, albeit briefly, the factual background giving rise to this application. In brief, the applicant

was arraigned before the Resident Magistrate Court of Mwanza at Mwanza charged with two counts. On 1st count, Rape c/s 130 (1) (e) of Penal Code Cap,16 and, 2nd count, Preventing a schoolgirl for attending school regularly c/s (2) of the Primary School (Compulsory Enrolment and Attendance) Rules 2002, G.N No. 280 of 2002 which reads together with section 35 (5) and (4) of the Education Act Cap. 353. Based on the applicant affidavit specifically on the 1st paragraph, the accused was found guilty of Rape c/s 130 (1) (e) and 131 (2) of Cap. 16 and consequently, sentenced to a term of 30 years imprisonment.

At the hearing of this application, the Applicant appeared and submitted in person while Ms. Fyeregete, learned State Attorney represented the Respondent.

The applicant submitted that he filed this application under section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 praying for extension of time to file a notice of appeal out of time to appeal to the Court of Appeal and he prayed this court to adopt his affidavit and form part of his submission. He went on avers that, when he was admitted to Butimba prison he signifies his intention to appeal and submitted his notice for typing to the prison authorities and shortly he falls sick and admitted. He went on that, he delayed filing the notice as he was

admitted at Bugando hospital for several months where he was found with tuberculosis. When he was discharged, he did not find his record as intended and later transferred from Butimba Prison then to Isanga Prison Dodoma and therefore he found himself out of time to file an appeal.

In rebuttal, Ms. Fyeregete State Attorney stated that the applicant did not give good reasons for his delay. She submitted that there are no documents to justify and exhibit the applicant assertions and he was not able to account for each day of delay. She went on to aver that, the applicant failed to justify the reasons he gave to this court as he did not provide with any document that supports his claims including the medical report concerning his sickness, and she prays this court to find the applicant was lazy and satisfied with the penalty given in 2010 and dismiss this application.

On his short rejoinder, the Applicant lamented that the situation they live in jail is a bit hard and he had receipts with him but they got lost. He prays this court to assist if possible to call for documents in Bugando Hospital as proof of his assertion. He went on to pray this court to extend time to file his notice of intention to appeal to the court of Appeal.

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 to the Court of Appeal. It settled law that an applicant must not only demonstrate reasons for the delay but also he must account for each day of delay in taking a particular step in the proceedings. The Court of Appeal has emphasized the requirement of accounting for every day of delay in a numerous decisions; examples are such as the recent case of **FINCA (T) Ltd and another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal Iringa, (unreported) delivered in May 2019 and the case of **Tanzania Coffee Board v Rombo Millers Ltd**, AR CAT Civil Application No 13 of 2015 (unreported) the Court reiterated its decision in **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No 3 of 2007 (unreported) which had held that:-

" Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay."

Guided by the above authority accounting for each day of delay is a good cause of delay. I have heard the applicant's submission and I find

that the applicant has not adduced sufficient reasons to move this court to grant his application. It is in the record that this court delivered a Judgment dated 15th day of December, 2010 in relation to an interlocutory order which arises from the Resident Magistrate Court of Mwanza and the appeal was dismissed. The applicant after being convicted by the Resident Magistrate Court of Mwanza, never appealed to this Court, instead on 21st day of October, 2019 he lodged a Misc. Application No.89 of 2019 applying for extension of time to appeal to the Court of Appeal. To-date, nine (9) good years have passed and the applicant did not account for each day of delay. It is stated in the case of **Republic v Yona Kaponda and 9 others** (1985) TRL 84 that:-

*"In deciding whether or not to allow an application to appeal out of time, the court has to consider whether or not there are sufficient reasons" not only for the delay but also " sufficient reasons" **for extending the time during which to entertain the appeal.**"* (Emphasis added).

Guided by the above authority it is obvious that the applicant has not state good reason to warrant this court to grant his application.

Having failed to surmount that hurdle, the Court cannot exercise its discretion by extending time pursuant to section 11(1) of the Appellate Jurisdiction Act, Cap.141. I am satisfied that the Applicant has not disclosed sufficient cause for his application to appeal out of time against this Court Order. Therefore, his application is accordingly dismissed.

Order accordingly.

Dated at Mwanza this 24th day of February, 2020.


A.Z.MGEYEKWA

JUDGE

24.02.2020

Ruling delivered on 24th day of February, 2020 in the presence of the applicant and Ms. Fyeregete, learned State Attorney for the Republic.


A.Z.MGEYEKWA

JUDGE

24.02.2020