

**IN THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(DISTRICT REGISTRY OF MBEYA)**

**AT MBEYA**

**MISC. CRIMINAL APPLICATION NO.145 OF 2019**

*(Originating from Criminal Case No.88 of 2017 in the District Court of Kyela  
at Kyela)*

**GODFREY S/O MBILINYI.....APPLICANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**RULING**

*Date of Hearing: 16/03/2020*

*Date of Ruling: 23/03/2020*

**MONGELLA, J.**

The Applicant was charged and convicted of the offence of house breaking and stealing in the District Court of Kyela at Kyela. He delayed lodging the Appeal and is now seeking before this Court for orders granting him extension of time within which to lodge his appeal out of time. The Applicant appeared in person while the Republic was represented by Mr. Baraka Mgaya, learned State Attorney.

In his submission during the hearing and also in his sworn affidavit, the Applicant submitted that he was convicted on 30<sup>th</sup> May 2017 and immediately filed the notice of intention to appeal. However, he could not lodge his appeal on time because he was waiting for copies of judgment and proceedings. He said the he received the copies of judgment and proceedings on 2<sup>nd</sup> January 2019 whereby the time limitation for lodging his appeal had already elapsed, hence this application.

Mr. Mgaya in his submission opposed the Applicant's application arguing that the Applicant has failed to properly account for the delay. He argued that the Applicant stated at paragraph 5 of his affidavit that he obtained the copies of judgement on 2<sup>nd</sup> January 2019 however, this application was filed in this Court on 16<sup>th</sup> October 2019, which was more than nine months. He argued that the Applicant has not explained what he was doing in all these nine months so as to convince the Court to grant his application. He added that it is established under the law that the applicant has to account for each day of the delay to avoid applicants coming to courts as they please. He concluded that since the Applicant has failed to account for the nine months, it is obvious that he has failed to show good cause before this Court for his delay and therefore his application must be dismissed.

In rejoinder, the Applicant stated that he was placed at Songwe prison whereby it is difficult to file an application.

It is settled under the law that extension of time is purely under the discretion of the court. However, the said discretion has to be exercised judiciously. In his affidavit, the Applicant stated that there was delay in obtaining copies of judgment and that he obtained the same on 2<sup>nd</sup> January 2019. Waiting for copies of judgment has already been settled by the courts of this Land to be sufficient reason warranting extension of time. See: **Msaada Shavunza & Another v. Joseph Mwashilindi**, Misc. Land Application No. 11 of 2018 (HC-Mbeya, unreported). The period therefore between 30<sup>th</sup> May 2018 whereby the Applicant was convicted and sentenced and 2<sup>nd</sup> January 2019 when he obtained copies of judgment and proceedings is excluded from computation of time.

The Applicant however, filed this application on 16<sup>th</sup> October 2019 which is more than nine months from the date of obtaining copies of judgment and proceedings. This is the period which he is in fact obliged to account for. In his affidavit or submission in chief, the Applicant never accounted for the period of further delay. It is this period where the contention lies as the Respondent's counsel argued that the Applicant has failed to account for the days between obtaining copies of judgment and filing of this application. It is a settled position under the law that each and every day of the delay has to be accounted for. In **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 03 of 2007 (unreported) it was held:


*"...delay of even a single day, has to be accounted for, otherwise there would be no point of having rules prescribing period within which certain steps have to be taken."*

See also, *Lyamuya Construction Company Ltd. v. Board of Registered Trustees of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010 (unreported) and *Moto Matiko Mabanga v. Ophir Energy PLC, Ophir Services PTY LTD & British Gas Tanzania Limited*, Civil Application No. 463/01 of 2017.


In rejoinder the Applicant submitted that he was placed at Songwe Prison whereby it was difficult for him to prepare the application immediately after obtaining copies of judgment and proceedings. The Court however, cannot entertain this argument because it being a matter of fact was not pleaded in the affidavit in support of the application. Besides it was raised as a new fact in rejoinder whereby the Respondent had no chance to reply thereof. See: *Registered Trustees of the Arc Diocese of Dar es Salaam v. The Chairman, Bunju Village Government & 11 Others*, Civil Appeal No. 147 of 2006.

By not accounting for the delayed dates after receiving the copies of judgment and proceedings, the Applicant has failed to provide sufficient reasons to warrant this Court to grant leave to appeal out of time. The application is therefore dismissed.

Dated at Mbeya this 23<sup>rd</sup> day of March 2020

  
**L. M. MONGELLA**  
JUDGE  
23/03/2020

**Court:** Judgment delivered at Mbeya in Chambers on this 23<sup>rd</sup> day of March 2020 in the presence of Mr. Kihaka, learned State Attorney for the Respondent.

  
**L. M. MONGELLA**  
**JUDGE**  
**23/03/2020**

