

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
MISCELLANEOUS CRIMINAL APPLICATION NO. 62 OF 2021
(Originating from the District Court of Vwawa at Mbozi,
Criminal Case No. 92 of 2019)**

REMMY RASHID MARANDU.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

REASONS FOR RULING

Dated: 15th & 22nd November, 2021

KARAYEMAHA, J

On 15/11/2021 after hearing the applicant and Mr. Hebel Kihaka learned Senior State Attorney for the respondent, I struck out the application for lack of sufficient grounds triggering this court to exercise its discretion and enlarge time. I reserved my reasons which I am now set to give.

This Court is being moved under section 361 (2) of the Criminal Procedure Act (Cap. 20 R.E. 2019) to grant orders for:

1. Extension of time within which to lodge notice of appeal and appeal out of time.
2. Any other orders the court may deem fit and just to grant.

The application is brought by way of a chamber summons supported with an affidavit sworn by Remmy Rashid Marandu giving reasons why he delayed to file his appeal. He averred that his previous application was declared incompetent on 14/12/2020 for citing a wrong law. Upon coming across a correct law he has come with the current law. He averred further that he delayed to file this application because he had no control over his affairs the prison authority was helping him in a very move.

On 15/11/2021 the applicant was invited to substantiate his reasons for delay. He simply addressed the court that the trial court delayed to supply him with copies of judgment and decree.

The respondent did not file a counter affidavit but on addressing the court Mr. Hebel Kihaka, learned Senior State Attorney, stated that the former application was struck out nine months ago. He held the view that from the date the former application was struck out till 23/08/2021 when the present application was filed eight (8) months had elapsed. Mr. Kiahaka was clear that the applicant did not explain why he delayed for all these months. He was convinced that due to that the applicant failed to assign good cause.

In his terse rejoinder, the applicant shifted blame to the prison authority that they failed to file his application in time.

I have anxiously considered the reasons for and against the application. The position of the law is settled that a party seeking an extension of time has to show a good and sufficient cause for his delay. (See: ***Benedict Mumello v Bank of Tanzania***, Civil Appeal No. 12 of 2002 CAT (unreported) and ***Juluma General Supplies Limited v Stanbic Bank Limited***, Civil Application No. 48 of 2014 (unreported)). My duty now is to determine whether there is any justification for this court to exercise its discretion under section 361 (2) of the CPA. The provision states as follows:

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

The quoted provision above bestows discretion to the court to extend time but that discretion must be exercised judiciously. In view thereof, the applicant has to establish sufficient cause to enable this court exercise its discretionary powers to extend the time within which the applicant to file a notice of appeal and appeal out of time.

The court of Appeal of Tanzania ventured and travelled in similar position. In ***Hanspaul Automechs Limited v RSA Limited***, (supra) the Court of Appeal observed thus:

"Extension of time is a matter of discretion of the court and that the applicant must put material before the court which will persuade it to exercise its discretion in favour of an extension of time."

Again, in ***Ngao Godwin Losero v Julius Mwarabu***, Civil Application No. 10 of 2015, the Court of Appeal laid down guidelines for the grant of extension of time repeating its decision in the case of ***Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010 thus:

- a) The applicant must account for all the period of delay.*
- b) The delay should not be inordinate.*
- c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- d) If the court feels that there other sufficient reasons, such as the existence of a point of law sufficient importance; such as the illegality of the decision sought to be challenged."*

The rationale for imposing this stringent condition is to ensure that court orders do not benefit a party who is at fault. This is the reasoning distilled by the defunct East African court of Appeal in ***KIG Bar Grocery & Restaurant Ltd v. Gabaraki & Another*** (1972) E.A. 503 in which it was held that:

"...no court will aid a man to drive from his own wrong."

In applications for extension of time, sufficient cause or lack of it is gathered from affidavits filed in support of the applications. This wisdom takes into consideration the fact that affidavits are evidence, unlike submissions from the bar which serve as narrations that complement the evidence deposed on oath (***The Registered Trustees of the Archdiocese of Dar es Salaam v The chairman Bunju Village and 11 Others***, Civil Appeal No. 147 of 2006). Adequacy of the reasons for the applicant's failure to take steps, at a particular time, is gauged through these depositions.

Having assessed the application and taken into consideration reasons advanced, I am comfortable to hold that the applicant has failed to adduce good and sufficient cause. I say so because the applicant has failed to account for delay of a period of eight months. This delay is immensely inordinate and the applicant has not shown diligence but is rounded by negligence and sloppiness in appealing. The applicant's contention that he had no control over his affairs being a prisoner, in my considered opinion is an afterthought because he had freedom to involve the prison authority on what he pursuing. As much as I know prisoner officers, they are trained to serve the inmates and they do it diligently. One of the reasons is to avoid strikes. What I have learnt from the applicant he did not involve the prison authority after his former application was struck out. The issue of delay to

be supplied copies by the trial court did not surface in the affidavit. It is simply stated in submissions which are not evidence.

I, thus, find a lot of laxity and unseriousness in the applicants' conduct and contention and going by the reasoning of the Court of Appeal in ***Ngao Godwin Losero's case***, I hold that the application is not sufficiently supported to trigger the Court's discretion.

Consequently, and on the basis of the foregoing, I hold that the applicant has spectacularly failed to convince this Court that delays in lodging the appeal were caused by sounding reasons that fall in the realm of sufficient cause. In view thereof, I find that the applicant has failed the test set for grant of extension of time. Accordingly, the merit lacking application is dismissed in its entirety.

It is so ordered.



Dated at **MBEYA** this **22nd** day of **November, 2021**

A handwritten signature in black ink, appearing to read "J. M. Karayemaha".

J. M. Karayemaha
JUDGE