

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. CRIMINAL APPLICATION NO 40 OF 2021

(In the matter of an application for extension of time to lodge a petition of appeal; (Originating from the district court of Ukerewe in Criminal Case No. 8/2021, original Nansio primary court, Ukerewe Criminal Case No. 46/2021)

KAKURU LADISLAUS APPLICANT

versus

CHAUSIKU KATULARESPONDENT

RULING

24th Nov, 2021 & 17th January, 2022.

RUMANYIKA, J;

The application for extension of time within which Kakuru Ladislaus (the applicant) to appeal is with respect to decision and orders dated 24/06/2021 of Ukerewe district court (the first appeal court) historically, from a fine of shs.100,000/= or 3 months custodial sentence in default and compensation of shs. 600,000/= as pronounced by Nansio trial primary court on 13/4/2021, the first appeal court having had enhanced it to a statutory term of fifteen (15) years.

Like the applicant, Chausiku Katula (the respondent) appeared in person. By way of audio teleconference I heard them on 24/11/2021 through mobile numbers 0717 175 050 and 0762 735 658 respectively.

Looking at the contents of the supporting affidavit that the applicant adopted during the hearing, in a nutshell he stated, and submitted that he would not have been time barred had his Criminal Appeal No 22 of 2021 (obviously within time instituted) not been struck out by this court (Ismail J) on 06/09/2021 for misjoinder of the Republic as respondent because the matter had originated in primary court henceforth privately prosecuted. That is all.

In effect the respondent is on record having had nothing to submit.

The issue is whether the applicant has assigned sufficient reasons for the court to exercise its discretion and grant extension of time. The answer is yes, much as, not only the respondent did not dispute the plainly true facts, but also the applicant only suffered the technical delay under the circumstances which one, according to the rule in the case of **The National Housing Corporation and 3 Others v. Jing Lang Li**, Civil Application No. 432/17 of 2017 (CA) unreported. That a technical delay constituted good and sufficient ground for extension of time suffices the point to dispose of the application.

Moreover, but without running risks of jumping into merits of the intended appeal, now that the trial court believed the prosecutions'

evidence, among others that initially for some reasons the applicant having had admitted retention of the alleged respondent's cow, but on demand he promised to release it and he did not honor the promises, if anything the proper charges should not have been of cattle theft C/s 258 of the penal Code Cap 16 RE. 2019 (the Code) but offence of conversion (C/s 284 of the Code) or something lesser charges what a point of illegality? Much as the law was settled that like it was the case here, in order to keep the records right, where established, sufficed the point of illegality. Whether or not the applicant had accounted for each day of the delay it was immaterial (case of Lyamuya Construction Company Ltd v. Board of the Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (CA)) unreported.

In the up short, the application has merits. It is accordingly granted with costs.

Right of appeal explained.



S. M: RUMANYIKA
JUDGE
19/12/2021

Date: 17/01/2022

Coram: A.W. Mmbando – DR


Applicant:

Respondent: Absent

B/C: Martina R. Nelei – RMA

Court: Ruling delivered this 17th January, 2022 in the absence of both parties.




A.W. MMBANDO
DEPUTY REGISTRAR
17/01/2022