

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**IN THE SUB- REGISTRY OF ARUSHA
AT ARUSHA**

MISC. CRIMINAL APPLICATION NO. 5 OF 2023

(C/F District Court of Arusha at Arusha in Criminal Case No. 305 of 2020)

LEODGUARD JOACKIM MARIWA _____ APPLICANT

VERSUS

THE REPUBLIC _____ RESPONDENT

RULING

10/07/2023 & 25/08/2023

BADE, J.

This application is made under section 361 (2) of The Criminal Procedure Act (Cap 20 R.E 2022). The applicant prays the following:

- (a) That, this Honourable Court may be pleased to grant extension of time to file notice of appeal and the appeal out of time to the High Court against the judgment of Hon. H.G MHENGA of the District Court of Arusha at Arusha in Criminal case No. 305 of 2020 delivered on 21st day of September 2022.*
- (b) Any other relief this Honourable Court may deem fit to grant.*

The application is supported by an affidavit sworn by the applicant.

The Respondent, the Republic did file a counter affidavit in opposition to the application.

Before going to the argument raised by applicant, let me give context to this application, albeit briefly. Court records reveals that, the applicant was the accused and convicted in criminal case No. 305 of 2020 at the District Court of Arusha at Arusha where he was charged with the offence of stealing by clerks and servant. He was found guilty and sentenced to serve 3 years in prison on 21st day of September 2022. He served the said sentence until 27th day of October 2022 when he was released from prison, and sent to community service at the Ward Executive office. According to the applicant, when he was in prison he prepared a notice of appeal and filed it at the prison admission office and waited for the copies of the judgment and proceedings so that he can prepare and lodge a petition of the appeal but he did not get the same. That, he was told by prison officer that his notice of appeal has been filed in court but he was not given a copy of the said notice. When he was released, he started making follow ups in court but to his surprise, he was told by the court registry officer that his notice was not



on the record. As he was already out of time, he has decided to lodge the instant application.

The Applicant appeared in person, unrepresented. The Respondent did not file any submission in reply to the Applicant's submission. On his part, the Applicant adopted contents of his affidavit. He submitted that after he was convicted and sentenced to serve three years in prison, he initiated his intention to appeal at the prison officer in charge at the prison admission office. That he had recently discovered that the said notice was neither in the court's file nor in prison registry so he could not proceed to file his appeal without the said notice of appeal.

Moreover, he submitted that when he lodged the notice of appeal, he was a prisoner hence he had no control over the affairs. It is his contention that he lodged notice of appeal within the prescribed time and that the delay was contributed by circumstances beyond his control as he stated in the affidavit from paragraphs 10-16. To support his position, he cited the case of **Maneno Muyombe and Another vs The Republic, Criminal Appeal No. 435 of 2016 (Unreported)** which held that:

"Being inmate serving time in prison, the appellants invariably had no control over their affairs and that they were necessarily at the mercy of

the officer-in charge of their prison, as it were. In this regards it was unfair to expect too much from them."

The Applicant further insisted that the delay had been caused by the circumstances beyond his control as he was in prison and his freedom of movement was invariably restricted, hence he could not make follow up at the court registry. To buttress his position, he cited the case of **Samson Mkulago Ololyai vs The Republic, Misc. Criminal Application No. 27 of 2022** where it was held:

"Having so expressed his intention to appeal the appellant left the matter in the hands of the prison officer who was duty bound to transmit the notice of appeal to the High Court. The default of the prison officer to forward the notice of appeal to the High Court is sufficient ground for extending the period of appeal."

In finalising his submission, he insisted that he left notice of his intention to appeal in the hands of the prison officer, the delay was not his fault.

I have carefully gone through the contents of the Applicant's affidavit and the arguments that he has raised, and I am of the settled opinion that my task in this Application is to determine whether the Applicant

has adduced good cause for the delay to move this Court to grant him the extension of time sought in this application.

As a matter of general principle, it is in the discretion of the court to grant extension of time. But that discretion is judicious, and so it must be exercised judiciously. Ideally in an application for extension of time the Applicant has to account for each day of delay by adducing good cause for the delay. In the case of **Lyamuya Construction Co. Ltd and Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported) there have been established guidelines to be followed before granting extension of time, 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 are other sufficient important reasons, such as the illegality of the decision sought to be challenged.*

Record has it that the judgment which the Applicant intends to appeal against was delivered on 21st September 2022, but It is not clear when he filed his notice of intention to appeal at prison admission office as he claimed. According to paragraph 7 of the affidavit he was released from prison in 27th October 2022 to serve in community service, and He filed this application on 08th February 2023. The Applicant's main argument is that he filed notice to appeal on time but due to the circumstances obtaining at the prison office, his notice was never filed before the court which is not his fault.

In my view, two issues are falling short in accounting for the time of delay to be enough in making a good cause. One, there is not clear evidence of when exactly the notice of intention to appeal was filed, and two, the applicant did not account for the days of delay from when he was released from prison to the time when he filed the present application before this court which is about 100 days of delay. This makes the test for not showing apathy, inordinate delay or sloppiness in the intended prosecution of the appeal is not satisfied.

His allegations that after he was released, he was struggling on acquiring a shelter and seeking legal assistance is not good enough cause to justify a delay of about 100 days bearing in mind that he did

not spend much time in prison before his release. In any case, the authority in the case of **Maneno Muyombe and Another (supra)** which was cited by the applicant cannot come to the Applicant's rescue and is distinguishable from this case because in the cited case, the appellants were still in prison which means their movements were highly restricted and they had no control over their affairs; while in this case, the Applicant was released from prison and could direct his own affairs.

In the upshot this application for extension of time is found lacking good cause for the delay and is thus dismissed.

It is so ordered.

DATED at ARUSHA on the 25th of August 2023.



**A.Z. BADE
JUDGE
25/08/2023**

Ruling Delivered in chambers on **25th of August, 2023** before parties /
their representatives.





A.Z. BADE
JUDGE
25/08/2023