

IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

MISC. CRIMINAL APPLICATION NO. 39 OF 2022

(Originating from Dodoma District Court at Dodoma Criminal Case No. 33 of 2020)

JONAS DANIEL @ SIMEO APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT


RULING

17th & 31th August, 2023.

HASSAN, J.:

This application made under section 361 (2) of the Criminal Procedure Act, [Cap. 20 R.E 2022]. In the chamber summons accompanied by affidavit deposed by him, the applicant is seeking for enlargement of a time within which to file a notice of intention to appeal and petition of appeal out of time.

Before this court, the applicant appeared in person unrepresented by counsel, whereas, the respondent Republic had the service of learned State Attorney, Ms. Tuli.

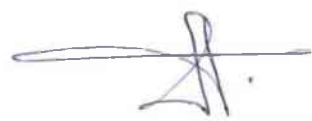


During hearing, the applicant being a layman had nothing material to submit, and instead, he prayed to adopt facts deponed in his affidavit to be his submission. On the other hand, there was no counter affidavit filed by the respondent to challenge the application. Knowing that, Ms. Tuli had passionately supported the application fore-fronted by the applicant.

On my part, although it was not contested by the rival side, I did not take that as a free license to grant the same. Therefore, as I am alive that, in order to activate court discretion to grant an extension of time, there must be a sufficient cause for delay, and that, the burden of proof lies to the applicant.

That being the case, I went through the facts deponed in the affidavit to ascertain if there is anything material presented by the applicant for the court to exercise its discretion. Thus, what is unveiled in the affidavit is as such; the applicant was incarcerated since the first day he was arrested and all matters concerning appeal were under the care of prison officers [see paragraph 3 of the applicant's affidavit]. Again, paragraph 4 and 5 comprises of an obvious statement and prayers but not reason for delay.

In the circumstance, the only reason for delay attested by the applicant as per paragraph 3 is that, he was incarcerated since the first day he was arrested and all matter concerning appeal were under the care of prison



officers. In my view, this is not a sufficient reason to trigger the court mandate to exercise its discretion. It is not known as to how prison officers were responsible for his appeal. This is the applicant's case and he is responsible for its fate, and if at all, there was delay caused by the prison officers, the applicant should have indicated it conspicuously in his affidavit or the officer should have affirmed through affidavit himself. Thus, mere assertion that the applicant was in incarceration will not be sufficient to grant an extension of time.

It has been said in time and time again, that for the court to warrant an enlargement of time, there must be a good cause. Although there is no straight definition of the phrase "good cause" so as to guide the Court in exercising its discretion to enlarge, the Court always considers factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent and whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged. See: **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010.**



Therefore, coached from the authority above, and upon consideration that no sufficient reason for delay was unveiled by the applicant, then definitely this application will fall unmeritorious. Thus, it is obvious that in order to achieve a proper and timely administration of justice, there must be strict deadline in filling legal documents. And thus, the deadlines are set to maintain order and efficiency in the legal process. Therefore, there must be genuine reasons which prevent someone from meeting the deadline; See **Granttech (T) Company Ltd v. Diamond Trust Bank Tanzania Ltd & 4 Others, Civil Appeal No. 447/16 of 2021 CAT** (Unreported).

In the upshot, from what I have discussed, this application lacks merit and I proceed to dismiss the same.

Ordered accordingly.

DATED at **DODOMA** this 30th day of August, 2023.




S. H. HASSAN
JUDGE