

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MOSHI
AT MOSHI
MISC. CRIMINAL APPLICATION NO. 2 OF 2023

SAIDI SALIM KANYANI APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

15th & 16th February, 2023

A.P.KILIMI, J.:

The applicant, SAIDI SALIM KANYANI has moved this court by way of chamber summons under section 10 of the Appellate jurisdiction Act Cap 141 R.E 2019 and section 361 (1) (b) and (2) of the CPA Cap 20 R.E 2022 and other enabling provisions of the law, praying for the following orders; First, that, this court may grant leave for the Applicant's appeal be heard out of time. And second, that, any other order(s) and relief (s) this court may deem it fit and just to grant. The applicant has supported this prayer by his duly sworn affidavit.

When the matter came for hearing, the applicant stood himself and submitted nothing but prayed this court to consider his affidavit. The Republic was represented by Ms. Mary Lucas Learned Senior State Attorney.

The applicant in his affidavit avers that, after being convicted and sentenced to life imprisonment by the District court of Same at Same, he lodged a notice of intention to Appeal within the prescribed time by the law. He then requested the convicting court to furnish the copies of Judgement and proceedings so as he may prepare and lodge his appeal. The same was received on November, 2022 at Karanga Central Prison and endorsed on 28th October, 2022 but the same were supplied to him in November, 2022. Thereafter, through careful observation he realized that was already time barred. Therefore, he was not responsible in any way for such delay of those copies of Judgement and proceedings to reach the prison hence it is incomprehensible for him to bear the consequences of that delay.

Responding to the applicant prayer, Mary Lucas, Senior State Attorney submitted that she has passed through applicant affidavit, since he is a prisoner, and file notice of Appeal on time, and since the proceeding and

Judgment was received in prison on November, and taking regard to his life sentence, she don't object his application.

I have considered the applicant prayer, he has used two laws to move this court, In my view he was not right to use section 10 of Appellate jurisdiction Act 141 R.E 2019, despite of being deals with matters from High Court to court of Appeal, it deals with the power of the High Court to admit to bail or postpone fine. Nonetheless, with the advent of the principle of Overriding Objective brought by the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2018 [ACT No. 8 of 2018] which now requires the courts to deal with cases justly, and to have regard to substantive justice, I see the remaining provision and the law is enough to move this court.

It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. (See the case of **M.B Business Limited v. Amos David Kassanda & 2 others**, Civil Application No.48/17/2018 and the case of **Benedict Mumelo v. Bank of Tanzania** [2006] 1 EA 227)

It is also the rule that, what constitutes "sufficient reason" cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules. (See the case of **Regional Manager TANROAD Kagera v. Ruaha Concrete Co. Ltd**, CAT Civil Application No. 96 of 2007, at DSM (Unreported).

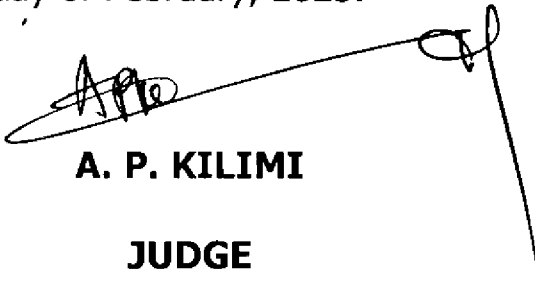
Having the above legal guide, I have entirely considered that, First, the applicant lodged a notice of intention to Appeal within the prescribed time by the law. Second, He then requested the convicting court to furnish the copies of Judgement and proceedings, and third, being in prison, he has to wait until the same is given to him by Prison Officer In charge, It is my considered opinion he exercised his due diligence to the process of appeal, therefore anything transpired in between is not his fault, and this in my view amount to sufficient reasons his application be granted.

In the upshot, I find and hold that the application is meritorious and I hereby grant it as prayed. Consequently, I order the applicant to file the intended appeal within 21 days from today.

It is so ordered.

DATED at **MOSHI** this 16th day of February, 2023.




A. P. KILIMI
JUDGE
16/2/2023