

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**[ARUSHA SUB-REGISTRY]**

**AT ARUSHA**

**MISC. CRIMINAL APPLICATION NO. 2 OF 2024**

*(Originating from the District Court of Karatu, Criminal Case No. 125 of 2021)*

**SIMON TIMOTHE..... APPLICANT**

**Versus**

**THE DIRECTOR OF PUBLIC PROSECUTIONS..... RESPONDENT**

**RULING**

*15<sup>th</sup> & 15<sup>th</sup> March 2024*

**MWASEBA, J.**

The applicant has preferred this application under **Sections 10 of the Appellate Jurisdiction Act**, Cap. 141 [R.E 2002], **361(1)(b) and (2) of the Criminal Procedure Act**, Cap. 20 [R.E 2019] and **14(1)(2) of the Law of Limitation Act**, Cap. 89 [R.E 2019], moving the court to grant him an extension of time to file a notice of appeal out of time. The applicant also seeks an extension of time to lodge an appeal in this court out of time. The application is supported by an affidavit deposed by himself. The respondent in the outset stated that they do not intend to file the counter affidavit as they do not contest the application.



Before venturing into what was argued by the parties, I deem it appropriate to give background facts of the case leading to this application, albeit briefly. The applicant was charged with the offence of **Rape contrary to Sections 130(1)(2)(a) and 131(1) of the Penal Code**, Cap. 16 [R.E 2022] in the District Court of Karatu. After a full trial, on 12/09/2022 he was convicted and sentenced to serve 20 years custodial term. He was aggrieved by the conviction and sentence. On 15/09/2022 he lodged a notice of intention to appeal to this court. While he was waiting to be supplied with copies of judgment and proceedings, he was transferred to Arusha Central Prison. On 10/08/2023, he was issued with copies of judgment and proceedings. On 25/08/2023, he instituted his appeal in this court as Criminal Appeal No. 110 of 2023. On 17/11/2023, when the appeal was called for hearing, it was found time-barred. Hence, it was struck out necessitating this application.

When the application was called for hearing on 15/03/2024, the applicant appeared in person, unrepresented, while Mr. Philbert Msuya, a learned State Attorney, represented the respondent. The hearing proceeded orally.

When given the opportunity to submit the application, the learned State Attorney did not contest the application. He supported the



application parting with the applicant that he exhibited sufficient cause for the delay.

On his part, the applicant being a lay person, he was delighted that his application was uncontested by the Republic. He prayed that the application be granted without more.

I have thoroughly examined the affidavit in support of the application and the annexes thereto. It is pertinent that I consider whether the delay in filing the notice of appeal and petition of appeal was with sufficient cause. The court's powers to extend the time for a party to do a particular thing that ought to be done within the prescribed time are discretionary, but they are to be exercised judicially. Such powers may only be exercised where it has been sufficiently established that good cause for the delay has been shown. Proof of good cause has been emphasized in various decisions, including the Court of Appeal decision in **Esio Nyomolelo and Another v. Republic**, Criminal Application No. 11 of 2015 (Unreported), where the Court stated:

*"With respect, Rule 10 of the Rules requires an applicant seeking for extension of time to show good cause before the Court uses its discretion to grant extension of time. The applicant is required to show and explain what prevented him from lodging his/her application within the*



*prescribed time. In so doing, the applicant has to account for every day of the delay caused by him in his affidavit."*

Now, the question is whether the applicant herein has furnished sufficient cause for the delay in filing the notice of appeal and petition of appeal in this court. Under paragraph 4 of the affidavit in support of the application, the applicant pleaded that he filed a notice of appeal on 15/09/2022, two days after the judgment was delivered. He accounted under paragraph 5 that he was waiting to be supplied with copies of proceedings and judgment when he was transferred to Arusha Central Prison. He was served with copies of proceedings and judgment on 10/08/2023. On 25/08/2023, he filed his appeal in this court, but on 17/11/2023, the appeal was found time-barred, hence struck out.

One may clearly note that in the first place the applicant filed the notice of appeal on 15/09/2022, closely two days after he was convicted and sentenced. He was also waiting to be supplied with copies of proceedings and judgment until the same were availed to him on 10/08/2023. Soon after being served with the said proceedings and judgment, he filed his appeal on 25/08/2023. Beyond imagination, one cannot hold the applicant careless, sloppy or negligent. He was prompt in prosecuting the appeal, only that he was delayed by the court for failure to avail him of the appeal documents within time.



The applicant being held in prison has no access to lawyers or cannot make follow-up of his appeal personally. He solely depends on the prison officers to assist in making follow-ups and even filing the appeal. Considering that the applicant was prompt in lodging the notice of appeal soon after the decision was delivered and that he filed the appeal immediately after he was served with copies of proceedings and judgment, I find the delay to have been attributed by sufficient cause. I have also seriously noted that the Republic did not contest the application because there were no genuine reasons to do so. A similar position has been taken by the Court of Appeal in the case of **Sospeter Lulenga v. Republic**, Criminal Appeal No. 107 of 2006 (unreported). In that case, the Court observed:

*"The learned judge found no good cause for extending the period of appeal. We respectfully fault this finding. One, paragraph 2 of the affidavit in support of the application clearly states that the appellant expressed his intention to appeal and also applied for copies of judgement and proceedings when he was admitted at Mpwapwa prison upon conviction and sentence. Second, 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.  
Under the circumstances, we find merit in this appeal."*

Triggered by the above demonstration and the authorities referred, I find and hold that the applicant's delay in filing the appeal was with sufficient cause. The application is merited. It is allowed in its entirety. The applicant is granted thirty (30) days from the date of this ruling within which to file the intended petition of appeal.

Order accordingly,

**DATED at ARUSHA** this 15<sup>th</sup> day of March 2024.



  
**N. R. MWASEBA**

**JUDGE**