

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF SUMBAWANGA

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 52 OF 2021

(Originated from Economic Case No. 13/2018 Katavi Resident Magistrates' court)

FRANK MLOWEZI.....APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

Date of last order: 02/8/2021

Date of Ruling: 13/8/2021

NDUNGURU, J.

The applicant in this application one Frank s/o Mlowezi has brought this application under Section 361 (2) of the Criminal Procedure Act, Cap 20 Revised Edition 2019. In his application the applicant prays for the following orders:

- (i) That the court be pleased to allow the applicant to file the notice of intention to appeal and petition appeal out of time.
- (ii) Any other order (s) the court may deem fit and just to grant.

The chamber application is duly supported by the affidavit duly sworn by the applicant and the affidavit of officer in charge of Sumbawanga prison one SP M.M Komba

The respondent/the Republic opted not to file the counter affidavit.

When the application was called up for hearing the applicant appeared in person (unrepresented) while the respondent/the Republic enjoyed the service of Mr. Peresi the learned State Attorney.

When the applicant was given an opportunity to submit in support of the application he briefly referred to the reasons for the delay to file notice of appeal and his appeal set forth in his affidavit. He requested the court to adopt his affidavit. He further prayed the application be allowed.

The learned State Attorney for the respondent did not object the application. In his submission he stated that the grounds set in the affidavit of the applicant and in the affidavit sworn by the officer in charge of the prison are genuine thus urged the applicant's application be granted.

Having considered the submissions of the parties and examined the grounds stated in the applicant's affidavit, the striking question in this application is whether there is any justification for this court to exercise its discretion under Section 361 (2) of the Criminal Procedure Act, Cap 20 (Revised Edition 2002). The said provision bestows this court with the discretion as it says:

"The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has lapsed."

It is trite that extension of time under the above provision is a matter of discretion on part of this court, but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case.

From the applicant's affidavit particularly paragraph 2 and 3, it is clearly noted that the delay was due to failure to be supplied with the copies of judgment and several transfer from one prison to another and his being in restraint which curtailed his control of the affairs. With due respect, I take this as a crucial point into account.

Apart from the above, I have also considered the particular circumstances of the applicant. Being inmate serving time in prison, the applicant had no control over his affairs; he was at the mercy of the Officer In charge of the prison or the prison authority. As the applicant submitted that having been sentenced he has been transferred from one prison to another. This fact is also authenticated in the affidavit sworn by the officer in charge of the prison at paragraph 2 of the affidavit. In this regard, it is unfair to expect too much from him. See the case of: **Buchumi Oscar V. Republic**, Criminal Appeal No. 295 "B" of 2011 Court of Appeal of Tanzania, **William Ndingu @ Ngoso V. Republic**, Criminal Application No. 3 of 2014 Court of Appeal of Tanzania and **Maneno Muyombe & Another V. The Republic**, Criminal Appeal No.435 of 216 (Court of Appeal of Tanzania (all unreported).

Basing on the foregone analysis I am of the conclusion that the applicant's pursuit for extension of time has exhibited good cause. In the consequence I grant the application. The applicant to lodge his notice of appeal within Fourteen (14) days from the date of delivery of this ruling and thereafter within Forty five (45) days he shall lodge his petition of appeal.

It is so ordered.



D.B. Ndunguru
D.B NDUNGURU

JUDGE

13/08/2021

ORIGINAL