

TANZANIA / JUDGMENT

ally mwanji vs republic 2021

tzhc 2584 29 march 2021

COURT
TZHCDECIDED
29 March 2021

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IN THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA AT
MBEYA MISC. CRIMINAL APPL. NO. 137 OF 2020 (Originating from Mbeya Resident Magistrate's
Court Cr. Case No. 159/2018) Wk. ALLY MWANJI..... APPELLANT
VERSUS REPUBLIC..... RESPONDENT

RULING

Date of last Order: 16/03/2021 Date of Ruling: 29/03/2021 NDUNGURU, J, In this application, the court is moved to exercise its discretion and grant extension of time which will give the applicant a lifeline that will enable the applicant to start his journey to this court by way of appeal. This court is moved by way of chamber summons preferred under section 361(2) of the Criminal Procedure Act (Cap 20 R.E. 2019). Further the application is accompanied by affidavit sworn by the applicant stating the ground for delay to file an appeal out of time. When the application was called up for hearing, the applicant appeared in person (unrepresented) while the respondent/ Republic enjoyed the service of Mr. Baraka Mgaya learned State Attorney, who resisted the application. The applicant being a layman and unrepresented had nothing Jk I' substantial rather requested the court to grant his application basing on the reasons for delay to file an appeal underscored in his affidavit. From the applicant's affidavit the reason for delay is stated at paragraph 2. At para 2 the applicant states that his appeal was delayed because the lower (trial) court did not supply him the copies of judgement and proceedings on time. Resisting the application Mr. Baraka Mgaya learned State Attorney was of the submission that, the applicant has failed to show sufficient cause for the court to grant application. It was his argument that the applicant has not stated when he was supplied the said documents so that the court should account the delay from the date the said documents were supplied. The learned State Attorney thus preyed the application be dismissed. In his rejoinder the applicant was of the submission that, he could not remember when the said documents were availed to him because the said documents are received at the person admission office where he does not have access to. Having heard 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 R.E.

2019. The provision which bestows this court such a discretion. It is trite that extension of time under the above cited provision of law is a matter of discretion of the court, but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular circumstances of the case. From the applicant affidavit, it is clearly shown that the delay of the applicant to file his appeal of the applicant to file his appeal on time was due to the delay to be supplied with necessary documents for filling his appeal. Though as stated by Mr. Baraka learned State Attorney that the applicant has not stated in his affidavit when the said documents were supplied to him. On that aspect the applicant had stated that he could not state the date he received the required documents because the said documents are received by the Admission office of the Prison Authority where he has no access. With due respect, I take this as a crucial point into account. Apart from the above, I have also considered that 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 Incharge of the prison or the Prison Authority. As the applicant submitted that the said documents are received at the Admission office where he has no access. To my perusal of the record, judgement was delivered on 30/11/2018, the Prison Authority received a copy of judgement on 18/09/2020 more than one year, and this application was filed 27/10/2020. In this regard, it is unfair to except too much from the applicant. See Buchumi Oscar V. Republic, Criminal Appeal No. 295"B" of 2011 CAT, William Ndingu @ Ngoso V. Republic, Criminal Application No. 3 of 2014 CAT and Maneno Muyombe & another V. The Republic, Criminal Appeal No. 435 of 2016 CAT (all unreported). Having underscored the above, 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 is given 14 (fourteen) days to lodge his Notice of intention to appeal and 45 (forty five) days to lodge his appeal both counting from the date of delivery of this ruling. It is so ordered. i
D.B. Ndunguru JUDGE 29/03/2021

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