

TANZANIA / JUDGMENT

BARAKA MWILENGA EXTENSION OF TIME

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25 March 2025

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA
SUB - REGISTRY AT MBEYA MISC. CRIMINAL APPLICATION NO. 4989 OF 2025 CASE REFERENCE
NO. 202502262000004989 (Originating from Criminal Appeal No.106 of 2023 of High Court of
Tanzania at Mbeya) BARAKA MWILENGA..... APPLICANT
VERSUS THE REPUBLIC.....RESPONDENT

RULING

24th & 25th March, 2025 NONGWA, J. The applicant has brought this application under section 11 (1) of the Appellate Jurisdiction Act. Cap. 141 R.E 2022. In his application he prays for the orders that; this Court may be pleased to grant the applicant leave for an extension of time within which to lodge notice of appeal and Memorandum of appeal out of time to the court of appeal of Tanzania in Criminal Appeal No.106 of 2023 of High Court at Mbeya and any other relief this Court may deem fit and just to grant. The chamber summons is dully supported by an affidavit sworn by the applicant. From the applicant's affidavit, he avers that he was convicted for 1 the offence of Rape u/section 130(1)(2)(e) and 131(1) of the Penal Code Cape 16 and sentenced to serve 30 years' imprisonment in Criminal Case No. 134 of 2017 at the district court of Momba at Chapwa. He appealed to the High court vide Criminal Appeal No.106 of 2023 and the same was dismissed on 27th August 2024. That being illiterate he was not able to capture the correct Criminal Appeal number so as to prepare the notice within time until he was served with court documents on 26th November 2024 which was the cause of the delay in filing the notice to appeal a thing which is beyond his control as a prisoner. When the application was called up for hearing, the applicant appeared in personal (unrepresented) he prayed to adopt his application and affidavit to form part of submission for his application while the respondent enjoyed the service of Mr. George Ngwembe, the Learned State Attorney, the respondent did not object the application. I have examined the grounds stated in the applicant's affidavit, the issue is whether there is any justification for this court to exercise its discretion under section 11 (1) of the Appellate Jurisdiction Act Cap 141 R.E

2022. The said provision gives court discretion where there is good cause to 2 admit an appeal notwithstanding that the period of limitation prescribed has lapsed. It is trite law that extension of time is a matter of discretion of court, but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case. Courts in a number of cases has accepted certain reasons as amounting to sufficient reasons. But no particular reason or reasons have been set out as standard sufficient reasons. It all depends on the particular circumstances of each application. It follows therefore, the grounds upon which an order for extension of time may be granted or otherwise would also depend on the circumstances of each case. Ordinarily, those grounds should be outside one's control. This was the position in the case of Felix Tumbo Kisima vs TTCL and Another

[1997] TLR 57 where the court stated that sufficient cause should not be interpreted narrowly but should be given a wide interpretation to encompass all the reasons which are outside the applicant's power to control or influence, resulting in delay in taking any necessary steps. The determination of this application will entirely depend on whether or not the applicant has given convincing explanation for the delay in lodging 3 his notice of appeal. Given the fact that the reasons advanced by the applicant in his affidavit have been accepted by the respondent as true, then it will be accepted without any argument that he has advanced sufficient reasons. The affidavit demonstrates that the delay was neither caused by nor can it be attributed to any slack conduct on the applicant. It is stated from the applicant's affidavit that delay in being supplied with copies of judgment and orders. That the appeal was dismissed on 27th August 2024 and he was supplied with the case documents on 26th November 2024. That being illiterate he was not able to capture the correct Criminal Appeal number until he was served with court documents. This he deposed was the cause of the delay in filing the notice to appeal, a thing which is beyond his control as a prisoner. I have also considered the particular circumstances of the applicant being serving time in prison, the applicant had no control over his affair. It has been observed in the number of decisions including the case of William Ndingu @ Ngoso vs Republic, Criminal Application No.3 of 2014 (CAT, unreported) and Maneno Muyombe and Another vs Republic, Criminal Appeal No. 435 of 2016, that being in prison, the applicant loses control of the appeal process thus amounting to sufficient cause for the delay. 4 Based on the circumstances of this application, I find applicant has advanced good cause for delay. In that regard I grant the application, notice of intention to appeal be filed within ten days from the date of this ruling and the petition of appeal be filed in accordance with the dictate of the law. V.M. NONGWA Judge 25/3/2025 Dated and Delivered at Mbeya this 25th Day March 2025 in presence (through Virtual Court) of Mr. George Ngwembe - State Attorneys for the Respondent and the Applicant in person. V.M. NONGWA Judge 5

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