

TANZANIA / JUDGMENT

RULING ISMAIL MUSA

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THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MWANZA SUB-REGISTRY AT
MWANZA MISC. CR. APPL NO. 24145 OF 2024 (Originating from Appeal No. 115 of 2021 (Ext, J)
No. 09/2021 of Geita dated 28 th day of April, 2021) ISMAIL S/O
MUSSA.....APPLICANT VERSUS THE
REPUBLIC.....RESPONDENT

RULING

21st and 22nd October, 2024 ITEMBA, J. The applicant Ismail Musa is applying for an extension of time to file his notice of appeal out of time against the decision of the High Court under the extended Jurisdiction of Hon. A Moshi Senior Resident Magistrate in Criminal Case no. 115/2021 issued on 13th April 2021. He was convicted with an offence of unnatural offence and sentenced for life imprisonment. When the application was scheduled for hearing, the applicant was present, unrepresented. The respondent was represented by Japhet Ngusa learned state attorney. The applicant explained that following his conviction and sentence he filed his notice of appeal on 28/4/2022 and he was waiting for the records. That he did not receive the said records and he came to realise that his notice was sent to Dar es Salaam instead of Mwanza. He insisted that his appeal was within time and what happened was out of his control. 1 The state attorney informed the court that he has seen the attached notice that it wrongly refers to Dar es salaam and considering the circumstances he supports the application. That, the applicant has shown a good cause. In our jurisdiction, the Court of Appeal's decision in Lyamuya Construction Company Limited v. Board of Trustees of YWCA, CAT-Civil Application No. 2 of 2010 (unreported), sets key conditions for the grant of extension. These are: "(a) The applicant must account for all the period of delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.

(d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged." Under section 11(1) of the Appellate Jurisdiction Act Cap 141 RE. 2019 this court is empowered to extend time when the applicant failed to lodge a notice to the court of appeal

within time. The wording of the said section implies the discretion of the court. However, such discretion has to be used Judicially where there are sufficient grounds given. 2 I have considered the application and gone through the attached notice of appeal and find that the notice was within time. However, the notice was not attended properly by the court's registry and this omission led to delay. It was not the appellant's fault. The applicants can not be punished for such irregularity. That said, the appellant has established sufficient cause for extension of time to be granted. Therefore, I am convinced that the applicant has shown good cause for this court to grant the application as prayed for in the Chamber summons. The application is granted. The applicants should lodge the requisite notice of appeal within twenty-one (21) days from the date of this ruling. It is so ordered. L.K.J. ITEMBA JUDGE 23/10/2024 Ruiling delivered in chamber in the presence of the appellant and Ms. G. Mnjari and in the absence of the respondent. 3

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