

IN THE HIGH COURT OF TANZANIA  
**AT TABORA**

APPELLATE JURISDICTION  
(Tabora Registry)

MISC. CRIMINAL APPLICATION NO.20 OF 2007  
ORIGINAL CRIMINAL APPEAL NO.25 OF 2006  
(PC) ULYANKULU CRIMINAL CASE NO.116 OF 2006  
OF THE DISTRICT COURT OF URAMBO  
**AT URAMBO**

Before; J.A. Khaliki, Esq. PRINCIPAL DISTRICT MAGISTRATE

NYONGABO S/O BALENGA.....APPELLANT

VERSUS.

THE REPUBLIC.....RESPONDENT

**RULING**

*15<sup>th</sup> August, 07 & 22<sup>nd</sup> August, 07*

**KIHIO, J.**

This is an application for extension of time to file an appeal.

The applicant, Nyongabo s/o Balenga filed this application against the respondent, Republic applying that the prescribed time for filing the Memorandum of appeal be extended.

The applicant's Chamber Summons is brought under section 25 (1) of the Magistrates' Courts Act, Cap.11 Revised Edition 2002 and is supported by an affidavit deposed by the applicant, Nyongabo Balenga.

The applicant deposed in paragraph 3 of his affidavit that the cause of delay in filing the Notice of appeal and Memorandum of appeal was (i) though he informed the District Court his wish to be present during the hearing of his appeal but he was not served with summons and the appeal was heard in his absence and judgement delivered in his absence. (ii) He was informed about the result of his appeal when the time for filing Notice of intention to appeal, as required in law, has elapsed. He also deposed in paragraph 4 of his affidavit that his appeal has overwhelming chances of success.

The applicant's affidavit was not countered by the Republic.

The applicant is unrepresented while the respondent is represented by Mr. Mokiwa, learned State Attorney.

The applicant submitted before me that his appeal in the District court was heard in his absence when he had indicated that he wished to present during the hearing of his appeal. He further submitted that

he received a copy of the District court judgement when his appeal was out of time.

Mr. Mokiwa did not oppose the applicant's application.

The applicant's affidavit shows that the applicant received the result of his appeal on 20.4.2007 and the applicant's Chamber Summons was filed on 30.5.2007. If the applicant knew the decision of the District Court on 20.4.2007 and he filed his application for extension of time on 30.5.2007 then his appeal is out of time for only ten days.

Under section 25 (1) (a) of the Magistrates courts Act, 1984 Revised Edition 2002, this court has discretion to extend the time for filing an appeal after the period of thirty day within which to file an appeal from the district court in their appellate or revisional jurisdiction has expired.

I find that there are points of Law for determination in the intended appeal.


As I have already indicated above the Republic does not oppose the applicant's application.

In view of the foregoing reasons, I find that there are sufficient reasons for extending the time for filing the applicant's appeal.

Therefore, the applicant's application succeeds and it is granted.

The applicant's appeal be filed within seven days from today.

Ordered accordingly.

  
S.S.S. KIHIO  
JUDGE  
22/8/2007

COURT; - Ruling pronounced in the presence of Mr. Mkoba, learned State Attorney and the applicant.

  
S.S.S. KIHIO  
JUDGE  
22/8/2007