

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(ARUSHA DISTRICT REGISTRY)**

**AT ARUSHA**

**MISC CRIMINAL APPLICATION NO. 46 OF 2018**

**MOHAMED ABDALLAH TUPA .....APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

**MAIGE, J.**

This is an application for leave to appeal against the decision of the Resident Magistrates' Court of Arusha in Criminal Case No. 158/2016 out of time. The application is made under section 361 (2) of the Criminal Procedure Act, Cap. 20, R.E. 2002. It is supported by the Affidavit of the applicant.

The decision sought to be faulted should leave be granted was pronounced on 8<sup>th</sup> May 2017. The applicant was imprisoned for a long sentence of 30 years. Before lodging the instant application, the applicant had initiated a miscellaneous criminal application number 87 of 2017 for extension of time to appeal, the application which was struck out, on 6<sup>th</sup> June, 2018 for being supported by a defective affidavit. The instant application was filed on 9<sup>th</sup> July 2018. This is hardly 28 days from the date of the striking out of the said application. The applicant deposes in the affidavit that the delay to

pursue the appeal was partly on account of the bonafide prosecution of the struck out criminal application.

On the date when the matter came for hearing, the applicant appeared in person and was not represented. Mr. Eziel, learned state attorney, represented the respondent. He informed the Court that he was supporting the application as the affidavit demonstrates sufficient cause for extension of time. On his part, the applicant invited the Court to grant the application.

I have painstakingly examined the affidavit and considered the counsel submissions. Though the affidavit in support of the earlier application which would justify the period between the pronouncement of the judgment and filing of the application is not part of the affidavit, I am inclined to agree with the learned state attorney that for the interest of justice the application should be granted. I have considered that the applicant has been in prison custody since the date of conviction. His opportunity to take necessary steps for preference of appeal is very restricted. His first application for extension of time was struck out for being incompetent. The applicant is on top of being in restraint, a layman. He would have not discovered the defect in the affidavit that culminated in the striking out of his previous application. I have also considered the fact that the applicant is serving a long sentence of 30 years.

For those reasons, I find it just and equitable to grant the application. The application is therefore granted. The applicant is allowed to file their notice

For those reasons, I find it just and equitable to grant the application. The application is therefore granted. The applicant is allowed to file his notice of appeal and intended appeal within 30 days from the date when he will receive a copy of this ruling.

It is so ordered.

**(SGD)**

**MAIGE. I**

**JUDGE**

**05.09.2018**

Date:- 5/9/2018

Coram: I. Maige, J

Applicant: Present in person

For the Applicant:

Respondent:

For the Respondent: Mr. Izack State Attorney.

C/C:- Mariam.

**Mr. Abdallah:** I pray that the application be granted.

**(SGD)**

**MAIGE. I**

**JUDGE**

**05.09.2018**

I hereby certify this to be a true copy of the original.



*J.F. Nkwabi*  
**J.F. NKWABI**  
**DEPUTY REGISTRAR**  
**ARUSHA**  
*12/09/2018*