

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. CRIMINAL APPLICATION NO. 204 OF 2019

(Originating from the decision of the District Court of Rufiji at Utete in Criminal Case
No.60 of 2002).

SELEMANI SALEHE @ MBWATE.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Last Order: 11.12.2018

Date of Ruling: 19.12.2018

KALUNDE, J.

This is an applicant, aggrieved by the decision of Rufiji District Court in Criminal Case No. 60 of 2002, is praying for leave to file a notice of appeal out of time. The application is Made under section 361 (2) of the Criminal Procedure Act [Cap. 20 R.E. 2002] and supported by an affidavit of **Selemani Salehe @ Mbwate**. In accordance with the affidavit of the applicant, the applicant was charged and convicted of un natural offence

contrary to section 154(1) of the Penal Code [Cap.16 R.E. 2002] and sentenced to 30 years imprisonment.

It would appear that on his admission at Ukonga Prison, through a letter with reference **No. 112/DAR/I/XIIV/2003** dated 15th August, 2003, the applicant filed a Notice of Intention to Appeal and requested to be supplied with true copies of the proceedings and judgement from the Senior District Magistrate, District Court Rufiji at Utete.

When the appeal was called for hearing, the appellant appeared unrepresented hence he defended for himself whereas the Respondent Republic was represented by Mr. Credo Rugaju Learned Senior State Attorney.

At the hearing the applicant adopted the affidavit in support of the application for bail and stated that the matter have taken long because lower court have refused to supply him with the copies of the proceedings and judgement. He urged the court to intervene and order the Rufiji District Court to supply him with copies of the proceedings and judgement so that he can file Notice of Appeal and petition thereof. In reply, Mr. Credo Rugaju supported the application. However, he vehemently rejected the proposal that this court intervene and order that the applicant be supplied with copies of the proceedings and judgement.

I have carefully considered the submission by both parties. This being an application for extension of time the applicant has a duty to establish that there is good cause for the delay to warrant the extension of time sought.

The only credible ground as deposed in paragraph 6 of the affidavit, which reads: -

"That, as I stated above I am a prisoner that delay in doing the same was not caused by me in matters beyond my control, I pray to your honourable court to consider that the period because when I also convicted in Rufiji District Court and admitted in Utete Prison, before I file the Notice of appeal the Prison authority their change me to other prison so that it was had to me to issue complete which I filed a notice of appeal on time."

This application is governed by the provisions of section 361(2) of the Criminal Procedure Act [Cap. 20 R.E. 2002] which reads: -

"The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed."

This section vests discretion on this Court to extend time. However, the discretion is to be exercised judiciously upon the applicant establishing good cause.

In the instant case the applicant wishes to appeal against the decision of the Rufiji District Court which was delivered on 06th August, 2003, according the applicants affidavit. He filed a notice of intention of appeal on 15th August, 2003 through a letter with reference No. 112/DAR/I/XIIV/2003. The notice was therefore filed well within the limits

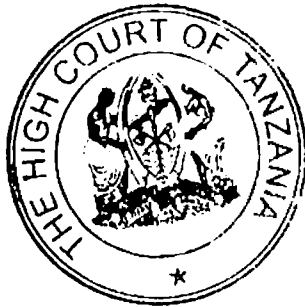
setout by law. His appeal ought to have been filed forty five (45) days after filing the notice of appeal, assuming that he had certified copies of the proceedings and judgement. However, since then never filed a petition of appeal.

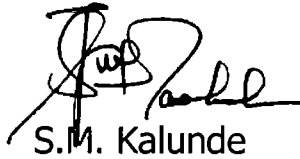
The applicant ground for failure to file the petition on time is that he was not timely availed with copies of the proceedings and judgement. The only available evidence in support of this contention is the letter with reference No. 112/DAR/I/XIIV/2003 dated 15th August, 2003. Almost sixteen years (16) on the applicant have been waiting to be supplied with copies of the proceedings and judgement with no subsequent reminders of the lower court.

For this court to exercise its discretion under section 361(2) of the CPA, the applicant ought to have, at least, attempted to account for the sixteen years delay. By failing to do so he has failed to demonstrate **“good cause”** for this Court to exercise its discretion. I take the position that where a desirous applicant sits back and does not call for records throughout the forty-five days following the decision intended to be appealed against and sixteen years subsequently, he cannot seek the benefit of the discretion under section 361(2) of the CPA.

Be as it may, the reasons advanced to support the application have no merits. It is hard to fathom any reason as to why an application to file notice and petition to appeal a decision made in 2003, should be made in September, 2019. Therefore, I hold that no sufficient or **“good cause”** has been demonstrated to warrant the grant of the orders sought.

In the event the application is dismissed for want of merits.

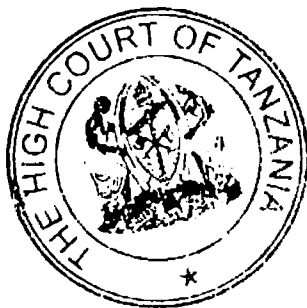


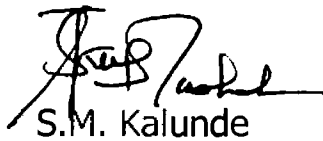

S.M. Kalunde

JUDGE

19/12/2018

Court: Ruling delivered in chambers in the presence of applicant in person and in the presence of Candid Nasua, State Attorney for respondent.




S.M. Kalunde

JUDGE

19/12/2018