

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

**MISC. CRIMINAL APPLICATION NO 235 OF 2019  
(Originating from Criminal Case No. 860 OF 2007 in the District  
Court of Ilala at Samora)**

**RAJABU SHABANI RAJABU..... APPLICANT  
VERSUS  
THE REPUBLIC ..... RESPONDENT**

**RULING**

*16<sup>th</sup> December, 2019 & 20<sup>th</sup> December, 2019*

**KISANYA, J**

The applicant one Rajabu Shabani Rajabu has filed an application for extension of time to file notice appeal out of time. His application arises from the decision of District Court of Bagamoyo at Bagamoyo (Criminal Case No. 323 of 2018. Pursuant to the said decision, he was convicted of armed robbery contrary to section 287A of the Penal Code (Cap. 16 R.E. 2002) and sentenced to serve thirty (30) years imprisonment. His appeal against conviction and sentence was struck out by this Court on 25<sup>th</sup> October, 2019 due to lack competent notice of appeal.

In order to exercise his right of appeal, the applicant lodged this application under section 361(2) of the Criminal Procedure Act (Cap. 20 R.E. 2002). The application is supported with the affidavit which gives background of this matter.

At the hearing of the application, the applicant appeared in person, unrepresented. On the other hand, Ms Rehema Mgimba, learned State Attorney appeared on behalf of the Respondent.

The Applicant adopted the chamber summons and affidavit and invited me to grant the application. He argued that he filed notice of appeal in time only to be told when his appeal was called for hearing that the same defective because it was titled to the District Court of Bagamoyo at Bagamoyo in lieu of the High Court of Tanzania. He submitted the delay was beyond his control and that he believed that the notice availed to him by the district court through the prison authorities was in order.

In her reply, the learned State Attorney on behalf of the Respondent objected the application. She argued that the applicant has failed to advance good cause after filing defective notice of appeal. Citing the case of **Nalongwa Zakaria vs Wandoa Nzuza**, Civil Case No. 27 of 1995, CAT (Unreported), Ms Mgimba submitted that ignorance of law pleaded in

paragraph 7 of the affidavit is not a justifiable cause for extending the time. She therefore urged me to strike out this application.

I must say that the powers to extend time for filing notice of appeal under section 361(2) of the Criminal Procedure Act (Cap. 20 R.E. 2002) is discretionary. It is exercised only when there is good cause. Factors to considered in determining whether good cause were stated by the Court of Appeal in the case of **Omary Ally Nyammalege (as Administrator of the Estate of the late Seleman Ally Nyamalenge) and Others vs Mwanza Engineering Works**, Civil Application No. 94/08 of 2017 to include length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended and whether the applicant was diligently.

I have given due consideration of the chamber application, affidavit, counter affidavit and oral submission of both parties. The main issue that I have to address is whether there is good cause for this Court to grant extension of time.

I understand that the applicant is duty bound to account for failure to file the notice of appeal in time. Annexure SB-1 to the affidavit in support of the application shows that the applicant signed notice of appeal on 9<sup>th</sup> May


2019. That was one day after the date of conviction. The said notice appeal was handed over to officer in-charge who lodged it in Court as required under section 363 of the CPA. Indeed, this notice of appeal was titled “In the District/ Resident Magistrate Court of Bagamoyo” thereby contravening the law as held in the case of **Farijala Shaban Hussein and Another vs Republic**, Criminal Appeal, No. 274 of 2012, CAT at Dar es Salaam (unreported).

The Applicant submitted that the defectiveness of the notice of appeal was beyond his control. That, apart from being a lay person, he believed the same to be in order because it was availed to him by the district court. The said notice of appeal (Annexure SB-1) is in a prescribed form. It shows that the applicant inserted his particulars in the blanks. The title “IN THE DISTRICT/RESIDENT MAGISTRATE COURT OF .....” is typed. It was not inserted or written by the applicant. Therefore, his argument that he was availed with the said document has merit. Considering further that communication of a person held in custody is restricted and passes through the prisons officer in-charge, I am of the considered that the applicant believed that the said document had no defect. In that regard, the issue of ignorance of law advocated by the learned State Attorney does not apply in the case at hand.

I have considered further that the applicant delayed when he was pursuing his appeal in good faith. As held in the case of **Omary Ally Nyammalege (as Administrator of the Estate of the late Seleman Ally Nyamalenge) and Others vs Mwanza Engineering Works** (*supra*) delay arising from time spent in the corridors of the court to pursue justice in good faith constitutes an excusable delay. For the aforesaid reasons, I grant the application for extension of time file notice of appeal out of time. I accordingly order that the Notice of Appeal be filed within 14 days from the date of this ruling.

It is so ordered.

Dated at **DAR ES SALAAM** this 19<sup>th</sup> day of **December, 2019**.

  
E. S. Kisanya  
**JUDGE**

Ruling delivered this 19<sup>th</sup> day of December, 2019 in the presence of the Applicant and Ms Rehema Mgimba, learned State Attorney for the Respondent



  
E. S. Kisanya  
**JUDGE**