

IN THE HIGH COURT OF TANZANIA

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 7 OF 2020

(Original Criminal Case No. 92/2019 from Mpanda District Court)

BARAKA S/O ANDREA.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

(Application for extension of time to file notice of intention to appeal and petition of appeal to this court from the decision of Mpanda District Court)

RULING

04th - 14th May, 2020

MRANGO, J

The applicant Baraka s/o Andrea has made this application under **section 361(2) of the Criminal Procedure Act, Cap 20, RE. 2002**, by the applicant, Baraka s/o Andrea, seeking leave for extension of time, that he be allowed to file notice of intention to appeal and appeal to this court outside statutory time required by law. The application is supported by the affidavits sworn, drawn and filed by the applicant himself and that of the Officer Incharge of Mpanda Remand Prison.

When the application was called on for hearing, the applicant was absent with leave due to and break of Covid-19; whereas, the respondent

cum republic had a legal services of Mr. Saraji Iboru – learned senior state attorney. The hearing proceeded orally.

In support the application, Mr. Saraji Iboru prayed for application to be granted as prayed by the applicant.

I have gone through this court's records and the respective submissions by Respondent. The question for determination is whether the applicant has been able to advance sufficient reason for the delay.

It is a cardinal principle that when the time has expired, there must be explanation or material upon which the court may exercise its discretion to extend it. See decisions in the case of **Regional Manager Tanroads Kagera versus Rinaha Concrate Co. Ltd; Civil Application No. 96 of 2007 CAT, unreported and Godwin Ndeweri and Karoli Ishengoma versus Tanzania Indil Corporation (1995) TLR 200 and Republic versus Yona Kaponda and 9 others (1985) TLR 84.**

In the instant application, the applicant through his averment in paragraphs 3 , 4 and 5 of the affidavit has advanced the reason for the delay being that, during the hearing of appeal before the Hon Ngigwana Resident Magistrate with Extended Jurisdiction , the Respondent raised an

objection on point of law that Notice of Appeal was bad at law for being titled in the Resident Magistrate of Katavi instead of High High Court of Tanzania as a result the appeal was strike out, he found that he is out of time to file notice of intention of appeal and petition of appeal, hence this application.

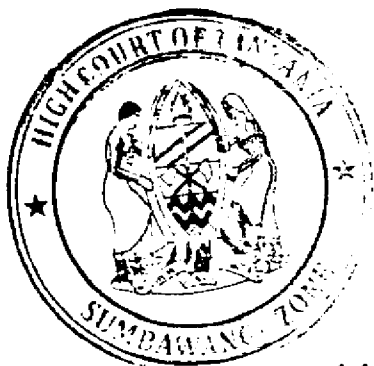
On his part, Mr. Saraji Iboru had no objection to the application by the applicant as he informed the court that the applicant has advanced sufficient reasons for the application which entitled him to be granted the prayer.

As well this application by the applicant is also supported by the supplementary affidavit of the Officer Incharge of Mpanda Remand Prison who supports what was stated by the applicant in his affidavit as to be true.

With that view, I find that the applicant has advanced good cause for the failure to appeal within prescribed period of time. For that reason, I allow the application. The applicant is given a period of ten (10) days from the date of which he receive a copy of this ruling within which to file the

notice of intention to appeal as well forty five (45) days within which to file petition of appeal to this court.

It is so ordered.




D.E MRANGO
JUDGE
14. 05. 2020

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| Date | - | 14.05.2020 |
| Coram | - | Hon. D.E. Mrango – J. |
| Applicant | - | Absent/with leave due outbreak of COVID 19 |
| Respondent | - | Mr. John Kabengula – SA |
| B/C | - | Mr. A.K. Sichilima – SRMA |

COURT: Ruling delivered today the 14th day of May, 2020 in the absence of the Applicant/with leave due to outbreak of COVID 19 and in the presence of Mr. John Kabengula – Learned State Attorney for the Respondent/Republic.

Right of appeal explained.




D.E. MRANGO
JUDGE
14.05.2020