

**IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA**

MISC. CRIMINAL APPLICATION NO 27 OF 2019

(Arising from Resident Magistrate's Court of Musoma at Musoma (Extended Jurisdiction, Economic Appeal No. 43/2019 and Economic Case No. 87 of 2014 of the District Court of Bunda at Bunda)

EMANUEL BATULE APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of Hearing: 11th February, 2020

Date of Ruling: 11th February, 2020

KISANYA, J.

This application for leave to file an appeal out of time is under section 361(2) of the Criminal Procedure Act (Cap. 20, R.E. 2002). Pursuant to the applicant's affidavit in support of the application, the applicant was convicted by the trial court (District Court of Bunda at Bunda) of offences of unlawful possession of Government Trophy contrary to section 86(1) and (2) (b) of the Wildlife Conservation Act, 2009 (as amended) read together with paragraph 14(d) of the First Schedule to the Economic and Organized Crime Control Act (Cap. 200, R.E. 2002); unlawful entry in the National Park

contrary to sections 21(1) and (2) of the National Park Act (Cap. 282, R.E. 2002); unlawful possession of weapon in the National Park contrary to sections 24(1)(b) and (2) of the National Park Act (Cap. 282, R.E. 2002) and hunting in the National Park contrary to section 231(1) of the National Parks Act (Cap. 282, R.E. 2002). Upon conviction, he was sentenced accordingly and is serving the maximum sentence of twenty years imprisonment.

Dissatisfied by that the judgement, conviction and sentence the applicant filed an appeal before this Court (Criminal Appeal No. 35 of 2019). However, on 7th November, 2019, the his appeal was struck out by the Resident Magistrate's Court of Musoma at Musoma (Extended Jurisdiction) in Economic Appeal No. 43/2019 on the ground that it was accompanied by defective the petition of appeal. In order to exercise his right of appeal, the applicant has preferred this application which was filed on 18th November, 2019.

When this application was fixed for hearing, the applicant appeared in person, unrepresented. On the other hand, the Respondent was represented Mr. Nimrod Byamungu, learned Stated Attorney.

In his submission, the applicant requested to adopt his affidavit and urged this Court to grant the application. The Respondent did not object to the application after noting that the applicant had filed an appeal which was struck out in time.

It is important to note that section 361(2) of the Criminal Procedure Act (Cap. 20, R.E. 2002) empowers this Court to extend the time to file petition of appeal if there is good cause. There is no definition of what amounts to

good cause. We can be guided by the decision of the Court of Appeal in **Osward Masatu Mwaizarubi vs Tanzania Fish Processing Ltd**, Civil Application No.13 of 2010, where it was held:

"...what constitutes good cause cannot be laid down by any hard and fast rules. The term "good cause" is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion..."

In another case determined by this Court, it was held that a plea by a lay person to file an appeal out of time in appropriate manner an appeal which was struck because it was wrongly filed but timely constitutes a sufficient reason (See the case of **Martha Daniel vs Peter Thomas Nko** (1992) TLR 359.

The reason for delay to file petition of appeal in the matter hand is deduced from paragraph 5 of the affidavit which reads:

"That, on 8th June, 2016 I received a copy of judgement of the above case. I appealed to the honorable high Court at Mwanza District Registry where the appeal was transferred to the same high court at Musoma District but unfortunately appeal was struck out for the reason of being defective."


The above cited paragraph and copy of judgement attached the affidavit show that the petition of appeal filed by the applicant was struck out because it was lodged by unauthorized person. However, it is clear that the applicant had filed his appeal in time. Since the accused person is a lay and guided by the decision of this Court in the case of **Martha Daniel vs Peter**

Thomas Nko (Supra), I find that there is good cause for this Court to grant the application for the applicant to file his appeal in appropriate manner.

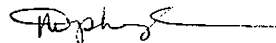
In the circumstance, this application is hereby granted. Accordingly, I order that the petition of appeal be filed within forty five (45) days from the date of this ruling.

Order accordingly.

Dated at **MUSOMA** this **11th** day of **February, 2020**.


E. S. Kisanya
JUDGE
11/2/2020

Ruling delivered this **11th** day of **February, 2020** in the presence of the Applicant and Nimrod Byamungu, learned State Attorney for the Respondent.


E. S. Kisanya
JUDGE
11/2/2020