

**IN THE HIGH COURT OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**MISC. CRIMINAL CASE NO. 01 OF 2019**

*(From Criminal Case No. 70 of 2009 of Musoma District Court at Musoma)*

**NYANSAGO S/O KIRABU ..... APPELLANT.**

***VERSUS***

**REPUBLIC ..... RESPONDENT.**

**RULING**

***Date: 11/02/2020***

***E. S. KISANYA, J***

The applicant one, Nyasabu Kirabu has filed an application for extension of time to lodge Notice of appeal out of time. His application is made by way of Chamber Summons, made under Section 361 (2) of the Criminal Procedure Act [Cap 20, R. 2002] and is supported by the applicant's affidavit.

Pursuant to the said affidavit, the applicant was convicted of offence unnatural offence contrary to section 154 (1) (a) and (2) of the Penal Code [Cap. 16, R. E. 200]. The affidavit does not show the conviction date. However, Annexure "NK 2" to the affidavits shows that the judgement was delivered on 17/03/2009 while Annexure "NK 3" indicates that the judgement was delivered on 09/3/2009.

At the hearing of this application the Applicant appeared in person while the Respondent was represented by Mr. Nimrod Byamungu, learned State Attorney.

The Applicant requested to adopt the grounds stated in his affidavit. This Court decided to read over the affidavit to the applicant. However the applicant stated that he had nothing to add or explain.

In his submission in reply, Mr. Byamungu did not support the application. The learned State Attorney argued that, the applicant has not advanced good cause for delay to file Notice of intention of Appeal. Mr. Byamungu submitted that the fact that the applicant failed to obtain copy of judgments and proceedings cannot be a ground of granting the application because Notice of appeal does not depend on availability of copy of judgement and proceedings.

Having heard both parties, I wish to state that application for extension of time to file Notice of Appeal as in the case at hand is governed by Section 361 (2) of the Criminal Procedure Act [Cap 20. R. E. 2002] which provide.

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

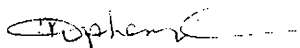
The time for filing Notice of intention to appeal is 10 days from the date of finding, sentence or order. Thereafter, this Court may extend that time if there is good cause. It is the applicant’s duty to advance the reasons for delaying to file Notice of appeal in time.

In the present application, the ground is stated in paragraph 4 of the Affidavit that this application has been filed because the applicant has not been supplied with copy judgement and proceedings. It appears that the judgement was delivered in 2009.

As rightly stated by Mr. Byamungu, filing of Notice of appeal is not subject to availability of copy of judgement and proceedings. Therefore, it is my considered opinion that failure to obtain copy of judgement and proceedings cannot be a good cause for this Court to grant the leave to file Notice of Appeal out of time. For the aforesaid reason, this application is hereby dismissed for want of good cause.

It is so ordered.

**DATED** at Musoma, this **11 February, 2020**

  
E. S. KISANYA  
**JUDGE**  
**11/02/2020**