

IN THE HIGH COURT OF TANZANIA

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 34 OF 2020

**(Original Economic Case No. 103/2018 from Nkasi District Court at
Namanyere)**

JAMES S/O KUSAYA.....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 Nkasi District Court)*

RULING

28th July- 05th August 2020

MRANGO, J

This is a ruling in respect of an application made under **section 361(2) of the Criminal Procedure Act, Cap 20, RE. 2002**, by the applicant, James s/o Kusaya, 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 Sumbawanga Prison.

When the application was called on for hearing, the applicant appeared in person, unrepresented; whereas, the respondent *cum* republic had a

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

Arguing for the application, the applicant prayed to this court to adopt the affidavit he filed. He had nothing more to add.

In reply, Mr. Saraji Iboru supported the application by the applicant. He said the applicant has advanced sufficient reasons for the prayer to be granted.

I have gone through this court's records and the respective submissions by both parties. 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 paragraph 2, 3 & 4 of the affidavit has advanced the reason for the delay being that, failure to lodge an appeal in time was out of his control as all his documents got lost after he has earlier on applied to the court, but recently the prison authority successfully retrieved the same from the court, 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 Sumbawanga Prison, who supported 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 today 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
05. 08. 2020

Date - 05.08.2020
Coram - Hon. D.E. Mrango – J.
Applicant - Present in person
Respondent - Mr. Fadhili Mwandoloma – SSA
B/C - Mr. A.K. Sichilima – SRMA

COURT: Ruling delivered today the 05th day of August, 2020 in presence of the Applicant in person, and Mr. Fadhili Mwandoloma – Senior State Attorney for the Respondent/Republic.

Right of appeal explained.




D.E. MRANGO
JUDGE
05.08.2020