

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA**

MISC. CRIMINAL APPLICATION NO. 159 OF 2019

*(Arising from Criminal No. 77 of 2018 in the Resident Magistrate's Court
of Mbeya at Mbeya)*

**BARAKA S/O CHARLES.....APPLICANT
VERSUS
THE REPUBLIC.....RESPONDENT**

R U L I N G

Date of last order: 09/03/2020

Date of Ruling: 09/03/2020

NDUNGURU, J.

The applicant in this application one Baraka s/o Charles has brought this application under Section 361 (2) of the Criminal Procedure Act, Cap 20 Revised Edition 2002. In his application the applicant pray for the following orders:

- (i) That the court be pleased to allow the applicant to file the notice of appeal and appeal out of time.
- (i) Any other order (s) the court may deem fit and just to grant.

The chamber application is duly supported by the affidavit duly sworn by the applicant.

The respondent/The Republic has opted not to file the counter affidavit.

When the application was called up for hearing the applicant appeared in person (unrepresented) while the respondent/the Republic enjoyed the service of Ms. Zena James, the learned State Attorney.

When the applicant was given an opportunity to submit in support of the application briefly referred to the reasons for the delay to file notice of appeal set forth in his affidavit particularly at para 1 and 2 of the affidavit, that he having been sentenced while in the prison, completed/filed the notice of intention to appeal against conviction and sentence and further prepared the grounds of appeal on time and left it to the admission office for filing to the court. Thus he had no control over them having left them at the admission office of the prison, for filing, thus filing at the wrong court was inadvertent.

Ms. Zena James, the learned State Attorney for the respondent did not object the application. In her submission she thus urged the applicant's application be granted.

Having considered the submissions of the parties and examined the grounds stated in the applicant's affidavit, the striking question in this application is whether there is any justification for this court to exercise its discretion under Section 361 (2) of the Criminal Procedure Act, Cap 20 (Revised Edition 2002). The said provision bestows this court with the discretion as it says:

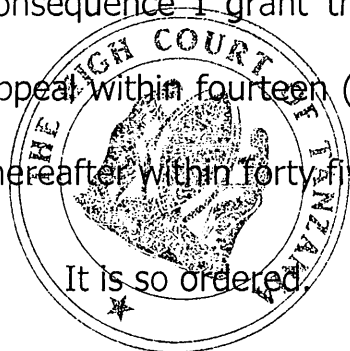
"The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has lapsed."

It is trite that extension of time under the above provision is a matter of discretion on part of this court, but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case.

From the applicant submission, it is clearly noted that the applicant fully utilized the ten days time of filing the notice of his intention to appeal, and filed the same to the court though not the proper forum he was required to file/present his notice of appeal according to the law. Thus when his appeal was due for hearing it appeared that the appeal is incompetent due to the fact that the notice which initiates the appeal was not proper. With due respect, I take this as a crucial point into account.

Apart from the above, I have also considered the particular circumstances of the applicant. Being inmate serving time in prison, the applicant had no control over his affairs, he was at the mercy of the Officer In charge of the prison or the prison authority. As the applicant submitted that having completed/filed the notice of intention and the appeal he submitted them to the admission office of the prison for necessary and further action. In this regard, it is unfair to expect too much from him. See the case of: **Buchumi Oscar V. Republic**, Criminal Appeal No. 295 "B" of 2011 Court of Appeal of Tanzania, **William Ndingu @ Ngoso V. Republic**, Criminal Application No. 3 of 2014 Court of Appeal of Tanzania and **Maneno Muyombe & Another V. The Republic**, Criminal Appeal No. 435 of 216 Court of Appeal of Tanzania (all unreported).

Basing on the foregone analysis I am of the conclusion that the applicant's pursuit for extension of time has exhibited good cause. In the consequence I grant the application. The applicant to lodge his notice of appeal within fourteen (14) days from the date of delivery of this ruling and thereafter within forty five (45) days he shall lodge his petition of appeal.




B. D. NDUNGURU
JUDGE
09/03/2020

Date: 09/03/2020

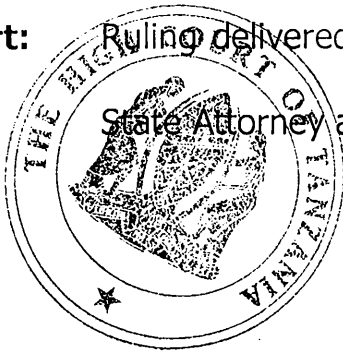
Coram: D. B. Ndunguru, J

Applicant: Present

For the Republic: Ms. Zena James – State Attorney

B/C: Zena Paul

Court: Ruling delivered in the presence of Ms. Zena James, the learned State Attorney and the applicant.




D. B. NDUNGURU
JUDGE
09/03/2020