

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

MISC.CRIMINAL APPLICATION NO. 82 OF 2019

(Originating from Criminal Case No. 39 of 2019 of the District Court of
Igunga at Igunga)

SAID JUMANNE@ SIDE APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

KIHWELO, J.

The ruling in this matter was reserved by my late brother, Bongole, J, who unfortunately did not live to compose and deliver as he suddenly passed on the night of 15th July 2020 exactly one month from the date the matter was last fixed for ruling. The record has now been re-assigned to me.

In its contents and demands it is apparent that in this application the applicant is essentially seeking enlargement of time to file notice and petition of appeal out of time against the decision of the Igunga District Court, in Criminal Case No. 39 of 2019. The application is by Chamber Summons supported by Affidavit of the applicant and the application has been taken out under the provisions of Section 361(2) of the Criminal Procedure Act,

[Cap. 20 R.E 2002] (Henceforth "the CPA"). The background to the matter, is, briefly, that the applicant and another two co-accused stood jointly arraigned for one count of Breaking into a building and committing an offence therein contrary to section 296 (a)(b) of the Penal Code [Cap. 16 R.E 2002] (Henceforth "the penal code"). It will suffice to say that it is common ground that the applicant pleaded guilty to the charge and upon his own plea of guilty he was subsequently sentenced to serve three years in prison.

The affidavit in support of the application reads in part as follows-

"3. That, after being convicted and sentenced, the trial magistrate had (sic) only explained that I have a right to appeal, he did not go further to inform me the appeal process as mandated by the law in terms of **section 359(1) of the CPA Cap 20 R.E 2002**, and so, I communicated by (sic) my father in order to engage a lawyer in order (sic) to comply with an individual (sic) process of my appeal, because I was dissatisfied with the decision of the trial court.

4. That, on 21. 2.2019 while at Igunga District Prison, I received the copy of judgment from the trial court for appeal purposes, but the same was taken by my father on 23.2.2019 for the lawyer to (sic) (Advocate) for preparation of my petition of appeal.

5. That on 24.4.2019 I was transferred from Igunga prison at Tabora while believing that my father had already been (sic) engaged an Advocate and so I was awaiting (sic) the services of the Advocate.

6. That on 27.5.2019 while at Uyui Central Prison the copy of judgment was returned back by my sister in law the reason being that my father was (sic) passed away before completion of engagement by the Advocate (sic) and so I decided to start the appeal process myself, hence this application due (sic) to the elapsing of time within which to appeal.”

At the hearing of the application, the applicant appeared in person, unrepresented whereas the respondent Republic had the services of Mr. Tito Mwakalinga, learned State Attorney. The applicant commenced his address by fully adopting the affidavit in support of the application and stated that he had nothing to add. Incidentally, in paragraph 3 of the supporting affidavit, the applicant blames the trial magistrate for not going further to inform him the appeal process. The applicant further associated his inability to file the appeal in time owing to the death of his father who was assisting him in looking for an Advocate.

In reply the learned State Attorney did not have much to say, but rather he was very brief in that the affidavit of the applicant did not demonstrate sufficiently good cause to warrant this court grant leave. He strenuously referred to paragraph 4 of the affidavit which to him did not disclose sufficient reasons.

The central issue for determination before me is whether or not the application before this court for enlargement of time is meritorious. In order to answer this question first and foremost let me revisit the law which gives this Court discretion to enlarge time within which to file notice and petition of appeal.

“Section 361(2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.”

I am keenly aware that the phrase “good cause” referred in the provision above has been judiciary tested in a number of decisions. In the case of **Aidan Chale v. The Republic**, Criminal Appeal No. 130 of 2003 (unreported) the Court of Appeal followed the path taken in the decision in **R. v. Governor of Winchester Prison, ex p Roddie** [1991]2 All ER 931, in which at page 934 Lloyd, L.J had the following to say;

“ ‘Good cause’ will usually consist of some good reason why that which is sought should be granted. It does not have to be something exceptional. “To amount to “good cause” there must be some good reason for what is sought.” It was considered that it was undesirable to define “good cause” and that it should be left to the good sense of the tribunal which has to decide whether or not good cause has been disclosed.”

Furthermore, the phrase “good cause” received judicial interpretation in the case of **Oswald Masatu Mwizarubi v. Tanzania Fish Processing**

Ltd, Civil Application No. 13 of 2010 (unreported) in which the Court of Appeal stated;

"What constitutes good cause cannot be laid by any hard and fast rules. The term "good cause" is 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."

It is instructive to state that extension of time under section 361(2) is a matter of discretion on the part of the High Court but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case. To stress this point, I wish to stress what was stated by the Court of Appeal in the case of **Kassana Shabani and Another v. Republic**, Criminal Appeal No. 476 of 2007 (unreported) that;

"Since there appears to be a recurring or perennial problem, we would like to take this opportunity to make it clear that once an applicant under section 361 of the Act has satisfactorily accounted for the delay in giving notice of appeal or filing a petition of appeal, extension of time ought to be granted as a matter of right"

I have deliberately reproduced paragraphs 3,4,5, and 6 of the applicant's affidavit in order to find out reasons explaining the delay. Gauging from the appellant's affidavit there are two main reasons advanced one is the failure by the trial magistrate to inform the applicant the appeal processes as required by law and also death of the applicant's father who was working on engaging a lawyer to represent the applicant.

"Section 359(1) Save as hereunder provided, any person aggrieved by the findings, sentence or order made or passed by a subordinate court other than a subordinate exercising its extended powers by virtue of an order made under section 173 of this Act may appeal to the High Court and the subordinate court shall at the time when such finding, sentence or order is made or passed, inform that person of the period of time within which, if he wishes to appeal, he is required to give notice of his intention to appeal and to lodge his petition of appeal."

Traversing the proceedings at the last page of the typed proceedings records are clear that the applicant's right of appeal was fully explained which I take it to mean that the applicant was not only informed of his right to appeal but rather he was also informed the period of time upon which he has to appeal and that is the essence of the word fully explained.

All in all, since the applicant lost his father who was helping him to get a lawyer and coupled with his transfer from Igunga Prison to Uyui Central Prison in Tabora, I am decidedly of the view that circumstances surrounding this matter justifies consideration of the applicant's prayer. I am alive to the fact that the right to legal representation is one of the corner-stone of any democratic society that seeks to uphold the rule of law, access to justice and is part and parcel of our constitutional rights.

I am satisfied that good cause has been shown for granting of an extension of time to file notice and the petition of appeal. The applicant is at liberty to file notice of appeal within ten (10) days from the date of delivery of this ruling. Thereafter, he shall, within thirty (30) days, lodge petition of appeal.



P. F. KIHWELO

JUDGE

10/12/2020

Ruling to be delivered by the Deputy Registrar on a date to be fixed.



P. F. KIHWELO

JUDGE

10/12/2020



Court: Ruling delivered this 17th day of December 2020 in the presence of the appellant but in absence of the Respondent.

Right of appeal explained fully.



A handwritten signature in blue ink, appearing to read 'B.R. Nyaki', is positioned above the printed name.

B.R. NYAKI

DEPUTY REGISTRAR

17/12/2020