

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**AT TABORA**

**MISC.CRIMINAL APPLICATION NO. 81 OF 2019**

(Originating from Criminal Case No. 38 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. The record has now been re-assigned to me.

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. 38 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.”

When the application was placed before me for hearing, the applicant appeared in person, and fended by himself 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 paragraphs 4,5,6 and paragraph 7 of the affidavit which to him the applicant was negligent.

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.”

It is plain and certain that, a party seeking the Court to exercise its discretion to grant the application for extension of time in which to do a certain thing, he/she is duty bound to show good cause for having failed to do what ought to have been done within the prescribed time.

The duty for the applicant to show good cause has consistently been restated by the Court in various cases, past and present, including those of **Oswald Masatu Mwizarubi v Tanzania Fish Processing Ltd**, Civil Application No.13 of 2010, Court of Appeal of Tanzania and **Sebastian Ndaula v Grace Rwamafa**, Civil Application No. 4 of 2014, Court of Appeal of Tanzania (both unreported).

The rationale for this was attempted in the English Case of **Ratnam v Cumarasamy and Another** [1964] 3 All E.R 933 where it was stated that:-

*"The rules of court must, prima facie be obeyed, and, in order to justify a court extending the time during which some steps in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation."*

In the instant case the applicant has raised two main reasons for his failure to lodge both the notice and the appeal in time. The first reason is the failure

by the trial magistrate to inform the applicant the appeal processes as required by law and the second reason is the death of the applicant's father who was working on engaging a lawyer to represent the applicant.

The applicant who was and still is in prison sought the services of an advocate through his father who sadly died before procuring the services of a lawyer. I am decisively of the view that the right to legal representation is one of the corner-stone of any democratic society that seeks to uphold the rule of law, ensure access to justice and is part and parcel of our constitutional rights.

It is not insignificant to state that, the Court is conscious that reasons for the delay in any application for enlargement of time is not the sole ground. See **Republic v. Yona Kaponda & 9 others** [1985] TLR 84. The court seized with duty to consider an application of this nature has to judge not only whether or not there are **sufficient reasons for the delay**, but also **for extending the time** to take the intended steps. To be more precise, the Court said in that case that:-

*"...as I understand it, "sufficient reasons" here does not refer only, and is not confined to the delay. **Rather, it is sufficient reasons for extending time, and for this I have to take into account also the decision intended to be appealed against, the surrounding circumstances, and the weight and implications of the issue or issues involved.** ... "[Emphasis mine].*



That said and done, I find that the applicant has shown good cause to attract the Court to grant the application for extension of time as I accordingly do. Thus, 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~~ 17<sup>th</sup> day of December 2020 in the presence of the applicant but in absence of the Respondent.

Right of appeal explained fully.



A handwritten signature in blue ink, appearing to read "B.R. Nyaki", is written over a light blue rectangular stamp.

**B.R. NYAKI**  
**DEPUTY REGISTRAR**  
**17/12/2020**