

IN THE HIGH COURT OF TANZANIA

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 3 OF 2019

(Original Criminal Case No. 01/2019 at Kalambo District Court)

HILARI S/O MBETI.....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 Kalambo District Court)

RULING

27th February 19th March, 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, Hilari s/o Mbeti, 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 Mollo Prison, Sumbawanga.

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. Irene Mwabeza – learned 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. Irene Mwabeza supported the application by the applicant. He said the applicant has established sufficient reasons and cited proper provision of the law 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.**

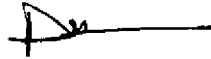
In the instant application, the applicant through his averment in paragraph 3 & 4 of the affidavit has advanced the reason for the delay being that, failure to lodge an appeal in time was out of his control as a prisoner who depends on prison authority to lodge notice of appeal and petition of appeal.

On her part, Mr. Irene Mwabeza had no objection to the application by the applicant as he informed the court that the applicant has established sufficient reasons for the application with proper citation of the provision of the law 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, Sumbawanga who support what was stated by the applicant in his affidavit as to be true.

With that view, I find that the appellant 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

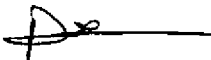
JUDGE

17. 03. 2020

Date - 19.03.2020
Coram - Hon. D.E. Mrango – J.
Applicant - Present
Respondent - Mr. Fadhili Mwandoloma - SA
B/C - Mr. A.K. Sichilima – SRMA

COURT: Typed Ruling delivered today the 19th day of March, 2020 in presence of the Applicant in person, Mr. Fadhili Mwandoloma – Learned State Attorney for the Respondent/Republic.

Right of appeal explained.



D.E. MRANGO

JUDGE

19.03.2020