

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

CRIMINAL APPLICATION NO. 15 OF 2021

*(Arising from Criminal Case No.173 of Karagwe District Court and Criminal Appeal
No.33 of 2021 RM'S Court of Bukoba, Ext, J)*

MAGANGA ONESMOAPPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

13/07/2021& 14/07/2021

NGIGWANA, J.

This is an application for extension of time within which to lodge notice of appeal and an appeal out of time against the decision of Karagwe District Court. The application is by way of Chamber summons made under the provisions of Section 361 (2) of the Criminal Procedure Act, Cap 20 R: E 2019. The chamber summons is supported by an affidavit duly sworn by the applicant. The application is not opposed by the respondent Republic

A brief background of this matter is to the effect that, the applicant was charged and convicted for Unnatural offence contrary to section 154 (1) of the Penal Code Cap 16 R:E 2019. After full trial, the court was satisfied that the case against the applicant was proved beyond reasonable doubt, therefore he was convicted and sentenced to serve a term of thirty (30) years in jail.

The applicant was aggrieved by the decision of the trial court and thus he appealed to the High Court. The matter was assigned to Hon. Luambano (SRM-EXT. J) and transferred to the Resident Magistrate Court of Bukoba. The same was struck out on the ground that it was instituted out of time. The court further informed the applicant that he is at liberty to start appeal process afresh, subject to the law of limitation.

The applicant has chosen to start appeal process afresh hence this application. When the application was called on for hearing, the applicant who stood unrepresented adopted his affidavit as part of his submission. He ended urging the court to grant the application.

The respondent Republic had legal services of Mr. Joseph Mwakasege, learned State Attorney. In support of the application, Mr. Mwakasege prayed for application to be granted as prayed by the applicant.

Now, the question for determination is whether the applicant has been able to advance sufficient cause for the delay. It is a cardinal principle that where extension of time is sought, the applicant will be granted upon demonstrating sufficient cause for the delay.

Conversely, it is also well settled that the sufficient cause depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent or might occur. See decisions in the case of **Regional Manager Tan roads Kagera versus Rinaha Concrete 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.**

The applicant through his averment in paragraphs 3 of the affidavit has advanced the reason for the delay being that, he prepared and signed his petition of appeal in time through the Prison Officer who had the duty to forward the same to the High Court Registry, but the officer delayed to file the same, and that omission was out of his control

As already pointed out Mr. Joseph Mwakasege had no objection to the application by the applicant since the applicant has advanced sufficient reason to warrant the grant of the prayer. Though this application by the applicant is not supported by the supplementary affidavit of the Officer In charge of Bukoba Prison, I am of the strong view that the omission has not affected the applicant's application.

Section 361 (2) of the Criminal Procedure Act, Cap 20 R:E 2019 provides that;

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

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 the date he receives a copy of this ruling, within which to file notice of his

intention to appeal as well as forty-five (45) days within which to file
petition of appeal to this court.

It is so ordered.



E.L. NGIGWANA

JUDGE

14/07/2021

Date: 14/7/2021

Coram: E.L. Ngigwana, J.

Applicant: Present

Respondent: Nehemia John, SA

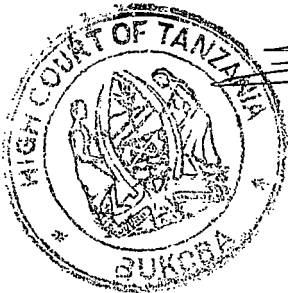
B/C: Gosbert Rugaika

Mr. Nehemia, SA:

The matter is coming for ruling. We are ready to receive it.

Applicant: I am ready too.

Ruling delivered this 14th day of July 2021 in the presence of the applicant and Mr. Nehemiah John learned State Attorney for the Respondent Republic.



E.L. NGIGWANA

JUDGE

14/07/2021