

**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF MUSOMA**  
**AT MUSOMA**

**MISCELLANEOUS CRIMINAL APPLICATION NO.47 OF 2020**

*(Originating from decision of the District Court of Tarime at Tarime in Eco. Case  
No 1/2015)*

**MWITA SIBOLA CHEGERE .....APPLICANT**

**Versus**

**THE REPUBLIC ..... RESPONDENT**

**RULING**

*8<sup>th</sup> Feb. & 15<sup>th</sup> March, 2021*

***Kahyoza, J.***

**Mwita Sibola Chegele, the applicant** seeks leave of this Court to extend time within, which to appeal. The prosecution did not oppose the application.

The applicant instituted his application by chamber summons supported by his affidavit under section 361(2) of the **Criminal Procedural Act**, Cap 20 R.E. 2019, (the **CPA**).

The applicant's reason for delay is that he delayed to lodge a notice of appeal as the judgment was delivered in absence. He deposed that he lodged a notice of appeal immediately after he was arrested and sent to prison. However, he found himself out of time if the time started running from the date the judgment was delivered and not on the date he was sent to prison.

A brief background of this matter is as follows: The district court

of Tarime convicted the applicant in his absence and sentenced him to serve a custodial sentence of 1 year for the offence in the first and second count and 20 years for the offence in the third count. The police arrested and submitted him to the trial court which ordered him to serve a custodial sentence passed in his absence.

The police presented the applicant to the court on the 4<sup>th</sup>/April/2017 and that very day the trial court ordered the applicant to serve a sentence passed against him in *absentia* on the 16/2/2016. He lodged a notice of appeal on the 13/4/2017, that is **nine days** after the trial court sent him to prison.

The respondent did not oppose the application.

It is trite law that a person applying for extension of time *must show that he is blameless for the delay*. See the case of **Mugo V Wanjiri** (1970) E.A 171. The applicant's that he was sentenced in *absentia* so he was unable to lodge a notice of on time. He lodged it on the date he was arrested and sent to prison. The applicant lodged his notice of appeal one year from the time he was sentence or say 9 days from the day he was sent to prison after his arrest.

The issues whether the applicant was out of time when he lodged a notice of appeal. Section 361 (1) of the **CPA**, requires a notice of appeal to be lodged **within ten days** from the date of the sentence or order unless the sentence or order is for corporal punishment. It stipulates-

"361.-(1) *Subject to subsection (2), no appeal from any finding, sentence or order referred to in section 359 shall be entertained unless the appellant-*  
(a) has given **notice of his intention to appeal within**


***ten days from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and (b) has lodged his petition of appeal within forty five days from the date of the finding, sentence or order, save that in computing the period of forty five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded."***

The trial court gave a judgment and passed a sentence *in absentia* on the 16/2/2016. Later, the police arrested the applicant and presented him to trial court on the 4/4/2017. The trial court ordered the applicant to serve the sentence passed against him *in absentia* on the 16/2/2016. It ordered the sentence to start running from 4/4/2017. For that reason, the applicant is serving the sentence passed on the 4/4/2017 and not on the 16/2/2016. If anything, the applicant was aggrieved by the sentence passed on the 4/4/2017. The record shows that the applicant signed the notice of appeal on the 11/4/2017 and the prison authorities lodged it to the trial court on the 13/4/2017. The notice of appeal was lodged within ten days as required by section 361(1)(a) of the **CPA**. The applicant misdirected himself to construe that time stated running from the day the sentence was passed *in absentia*. Time within which to lodge a notice of appeal started running from the day the trial court ordered the applicant to serve the sentence after his arrest.

In the upshot, I find the applicant was not out of time when he lodged the notice of appeal hence, the notice of appeal was lodged within time. Since the applicant is out of time to appeal, I grant him 20 days' leave, from the date of this ruling, to institute the intended

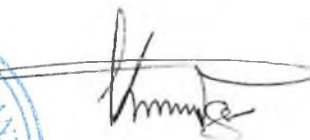
appeal. There is no need of lodging a new notice of appeal as the notice of appeal lodged on the 13/4/2017 is still valid. It was lodged within the prescribed time.

It is ordered accordingly.



**J. R. Kahyoza**  
**JUDGE**  
**15/3/2021**

**Court:** Ruling delivered in the presence of the applicant and Mr. Temba, state attorney for respondent via video link. B/C Ms. Catherine present.



**J. R. Kahyoza**  
**JUDGE**  
**15/3/2021**