

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**MISC. CRIMINAL APPLICATION NO. 54 OF 2020**

**JOSEPH MUGESI MTOGORI ..... APPLICANT**

***VERSUS***

**REPUBLIC ..... RESPONDENT**  
***(Application for extension of time within which to lodge appeal  
from the decision of the District Court of Serengeti at Mugumu in  
Criminal Case No. 148 of 2017)***

**RULING**

5<sup>th</sup> and 5<sup>th</sup> May, 2021

**KISANYA, J.:**

In this application, Joseph Mugesu Mtogori is seeking an order of the Court to extend time within which to file petition against the decision of the District Court of Serengeti at Mugumu in Criminal Case No. 148 of 2017. The application has been made by way of a Chamber Summons preferred under section 361 of the Criminal Procedure Act and supported by an affidavit deposed by the said Joseph Mugesu Mtogori on 19<sup>th</sup> October, 2020. The respondent did not file a counter-affidavit to resist the application.

At the hearing of this matter, the applicant appeared in person. The respondent was represented by Mr. Nimrod Byamungu, learned state Attorney.

When given the floor to submit in support of the application, the applicant prayed to adopt the affidavit in support of the application and urged the Court to grant him leave to appeal out of time. In reply, Mr. Byamungu had no objection to the application.

I have considered the application, the supporting affidavit, submissions by the applicant and the learned state attorney for the respondent. As stated herein, the Court is moved to extend the time within which the applicant can file appeal against the decision of Serengeti District Court in Criminal Case No. 148 of 2017, in which the applicant was convicted for the offence of rape and sentenced to thirty years' imprisonment.

It is opportune to acknowledge that the time within which to appeal in respect of matter subject to this application is 45 days from the date of impugned judgment, sentence or order. The applicant is also required to have lodged the notice of intention to appeal within ten days after that decision. The said time is set out in section 361(1) of the Criminal Procedure Act [Cap. 20, R.E. 2019].

Recognizing that an aggrieved party may not be able to meet the time limitation, section 361(2) of the CPA empowers this Court to extend the time within which to appeal or lodge the notice of intention to appeal. The primary consideration is whether there is good cause. This being discretionary power, it has to be exercised judiciously. However, it is the applicant's duty to prove that delay was beyond his control. Other factors which are considered in determining whether to grant the application for extension of time include length of delay, whether the applicant is diligent and not negligent or sloppiness in prosecuting matter that he intends to take and valid explanation for the delay. See **Damas Assey and Another Vs Raymond Mgonda Paula**, Civil Application No. 32/17 of 2018, CAT at Dar es Salaam, **Tanga Cement Company Limited v. Jumanne D. Masangwa & Another**, Civil Application no. 6 of 2001; **Wambura N. J. Waryuba vs. The Principal Secretary, Ministry of Finance and Another**, Civil Application No. 225/01 of 2019 and **Juma Shomari vs Kabwere Mambo**, Civil Application No. 330/17 of 2020, (all unreported).

In our case, it is depicted from the affidavit and a copy of notice of intention to appeal appended thereto that the applicant was prompt to take action against the impugned decision. He expressed his intention to appeal on 27<sup>th</sup> November, 2017. That was five days after the decision which he intend

to appeal against. He deposed to have applied for the copy of judgment and proceedings on the same.

However, it was on 28<sup>th</sup> July, 2020 when the copy of judgment was supplied to him. I have gone through the said copy of judgment and noticed it was certified by the trial court on 21/02/2020 and received at Kigoma Prison where the applicant is detained on 28.07.2020. Nothing suggesting that the requested copy of proceedings was served to the applicant. I am mindful that according to section 361(1)(b) of the CPA, the time required for obtaining a copy of the proceedings, judgment or order appealed against is excluded in calculating the time limitation. However, in terms of section 361(2) of the CPA, the leave for extension of time may be granted before or after expiration of the time limitation.

In view of the above discussion, I find that the applicant has managed to prove good cause for this Court to exercise its discretionary power of extending the time within which to lodge petition of appeal. I accordingly allow the application and hereby order as follows:

1. Since the applicant still needs the copy of proceedings, the same should be served to him within 30 days from the date of this ruling.

2. That the petition of appeal be filed within forty days from 4<sup>th</sup> June, 2021 which is the last day of serving the copy of proceedings to the applicant.


It is so ordered.

DATED at MUSOMA this 5<sup>th</sup> day of May, 2021.



  
E. S. Kisanya  
JUDGE

COURT: Ruling delivered through video link on the 5<sup>th</sup> day of May, 2021, in appearance of the applicant and Mr. Nimrod Byamungu, learned State Attorney for the respondent.

  
E. S. Kisanya  
JUDGE  
05/05/2021