

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

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 16 OF 2021

**(C/F Economic Case No. 12 of 2017, in the District Court of Babati at
Babati)**

SELEMANI ABDALLA APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

27/5/2021 & 4/6/2021

ROBERT, J:-

This is a ruling in respect of an application filed by the Applicant, **Selemani Abdalla**, seeking an order for extension of time to file both the notice and petition of appeal against the decision of Babati District court in Economic Case No. 12 of 2017. The application is supported by the affidavit sworn by the Applicant on 24th day of November, 2020.

The Applicant moved this court under section 361(2) of **the Criminal Procedure Act**, Cap. 20 R.E. 2002 and Rule 10 of **the**

Appellate Jurisdiction Act, Cap. 141 R.E 2002. The court found the cited section 361(2) of Cap. 20 to be applicable as it vests the High Court with the requisite jurisdiction. However, Rule 10 of Cap. 141 cited by the Applicant is found to be non-existent and therefore both superfluous and inapplicable in vesting jurisdiction to the High Court to exercise extension of time. Since the Applicant cited both the correct provision and inapplicable/non-existent provision, the application remains competent before the court by virtue of the correct provision. (See **Bitan International Enterprises LTD versus Mished Kotak, Civil Appeal No. 60 of 2012, CAT at Dar-es-salaam (unreported)**)

At the hearing of this application on 27th May, 2021, the Applicant appeared in person without representation whereas the Respondent was represented by **Mr. Ahmed Hatibu**, learned State Attorney.

The Applicant adopted what is stated in his affidavit in support of this application and invited the court to consider the reasons for delay stated therein in granting the prayer sought.

In reply, Mr. Hatibu decided not to oppose the application based on the grounds stated in the Applicant's affidavit.

I have had time to peruse the documents in support of this application. The affidavit in support of this application particularly,

paragraphs 4,7, 8, 9 and 10 serves to explain that, on 28/3/2019 the Applicant was convicted and sentenced to a jail term of twenty (20) years and taken to Babati Prison in Manyara region on the same day. Aggrieved, he applied for a copy of Judgment and declared his intention to appeal on 1/4/2019. Later on, after receiving a copy of judgement, he prepared a memorandum of appeal and forwarded to the District Registrar of High Court Arusha for filing on 9/7/2020. Unfortunately, it was rejected for the reason that his notice of intention to appeal was time barred. He added that, what made his notice of intention to appeal to be barred was out of his control as he depended on the Prison's Authority to facilitate his appeal by lodging the required documents timely. Accordingly, he implored the court to consider the interest of justice and grant his prayers.

This court is aware that powers vested to the court to grant extension of time are discretionary but needs to be exercised judiciously. This means the court needs to gauge whether or not the reasons for the delay as stated by the Applicant amounts to a good cause or sufficient reason. The circumstances of each case takes precedent in determining what amounts to a good cause.

In the present application, the reason for delay as stated in the Applicant's affidavit is to the effect that, the prison authorities delayed in

transmitting the notice of appeal which resulted to rejection of his memorandum of appeal. I find the reason stated to be sufficient given that the Applicant was in custody without any say on facilitation of the appeal process. There is no evidence from the Respondent to controvert what the Applicant had stated. Accordingly, I find no justification not to allow this application and grant the prayers sought by the applicant.

Consequently, this application is allowed. The Applicant is given fourteen days (14) days from the date of this Ruling to lodge both the notice and petition of appeal.

It is so ordered.

