

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
MISC. CRIMINAL APPLICATION NO. 38 OF 2021
(Originating from criminal case No. 75 of 2020
in the District Court of Mbalari at Rujewa)

CHIBI S/O MKULATI.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

R U L I N G

Dated: 13th & 14th July, 2021

J. M. KARAYEMAHA, J.

This Court is moved under Section 361 (2) of the CPA [Cap 20 R.E 2019] for orders that:

1. That this hon. Judge be pleased to hear this application of extension of time to lodge notice of appeal and petition of appeal out of time.
2. Any other order (s) this hon. Court may deem fit and just to grant.

The application is made by way of a Chamber Summons supported with an affidavit sworn by Chibi Mkulati which together with other records give the background thereof. The affidavit essentially deponed that the applicant is a prisoner serving a sentence of 4 years for the offence of obtaining goods by false pretence. The applicant averred further that he

previously gave a notice of intention to appeal through the support of the prison authority within time. Few days later he was transferred to Songwe prison from Mbarali prison. He stated adding that the Mbarali prison authority helped him to prepare the petition of appeal after getting the copy of judgment and proceedings on 6/1/2021. The petition was received at the High Court on 8/1/2021. Unfortunately, his petition was rejected for sinning against the prescribed format. So, he was to be transferred to Ruanda Prison clear the problem but because he was out of time he resorted to filling the instant appeal.

In the counter affidavit sworn by Sara, the respondent resisted the application on account that the applicant neither attached the notice of appeal and copy of petition of appeal alleged to be prepared and lodged in the High Court. The respondent averred further that the applicant failed to advance sufficient reason for his delay.

When the matter was called on for hearing on 13/7/2021, the applicant appeared in person. On the other hand, the respondent was represented by Ms. Hanarose Kasambala, learned State Attorney.

When parties were invited to submit, the applicant beseeched his affidavit to be adopted and his application to be granted.

On her part, Ms. Hanarose saw no sufficient reason advanced by the applicant intimating why he delayed to file a notice of appeal and petition

of appeal. It was her submission that the applicant failed to attach the purported filed notice of appeal and petition of appeal. She argued further that since the applicant is blaming the prison authority for failing to file his documents, he had to attach the affidavit to support his assertion.

I have considerably perused the affidavit and other documents and submissions by parties thereto. In my view the main issue for determination is whether the applicant has advanced sufficient reasons for this court to consider his application for extension of time to file the notice of appeal and petition of appeal out of time.

My starting point is that the law on extension of time is well settled in our land. First of all, extension of time is in the discretional powers of the courts. The applicant in an application for extension of time is required to establish good cause in order for the court to exercise its discretional powers to extend the time. In the famous case of **Alliance Endurance Corporation Ltd vs. Arusha Art Ltd**, Civil Application No. 33 of 2015 (unreported) the Court of Appeal of Tanzania explained that extension of time is a matter of discretion of the Court and the applicant must put material before the Court which will persuade it to exercise its discretion in favour of an extension of time. Also, in the case of **Regional Manager TANROAD Kagera vs. Ruaha Concrete Co. Ltd**, Civil Application No.

96 of 2007 (unreported) the Court of Appeal of Tanzania had insisted at pages 6 and 7 that:

"For the court to grant extension of time there must be sufficient material in order to enable it exercise its powers. A person who proposes to have time extended he must have sufficient material in order to enable the Court to move away from its time table for disposal of case, that is; cases must have time limit."

This is also the import of section 361 (2) of the CPA which provides that:

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

In this case the Applicant gives reasons for delay to file notice of appeal and petition of appeal as being a delay to supply copies of judgment and proceedings and lack diligence on the part of the prison authority.

It is clear that from the records that the applicant is serving custodial sentence. Categorically, to succeed in his intentions he depends on the activeness of the prison officers. From the date copies of the judgment and proceedings were supplied, it was expected the prison officer to assist him pursue his right of appeal. Hardship on his part was increased when he was shifted from Mbarali prison to Songwe prison. This mere transfer increased a gap on him to make a thorough and timely follow up.

Reasonably, he could not be focused as far as his intention to appeal is concerned. Being behind the bars, his last hope dwelt in the prison authorities who prepared and filed the notice of appeal and petition of appeal. My take of the reasons advanced in the affidavit leaves me with a comment that the prison authority failed the applicant. In as much as this fact shall remain standing, I have no good reasons to dis-grant his application.

A glance at the affidavit that supports the application takes me to the same conclusion as that of the applicant which has advanced good and sufficient cause which outweigh the resistance staged by the respondent.

Consequently, and on the basis of the foregoing, I hold that the applicant has spectacularly succeeded to convince this court that delays in lodging the notice of appeal and petition of appeal were caused by sounding reasons that fall in the realm of sufficient cause. In view thereof, I allow the applicant's application. This court extends the time within which applicant may file his notice of appeal for 14 days and petition of appeal for 45 days from the date of the ruling.

It is so ordered.

Dated at Mbeya this **14th** day of **July, 2021**



J. M. Karayemaha
JUDGE