

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SUMBAWANGA
AT SUMBAWANGA
MISC. CRIMINAL APPLICATION NO. 14 OF 2021

(Originated from Criminal Case No. 19/2020 Mpanda District Court at Mpanda)

JUAKALI s/o ALON@ RICHARD.....APPLICANT
VERSUS
THE REPUBLIC.....RESPONDENT

RULING

Date of last order: 26/7/2021

Date of Ruling: 06/08/2021

NDUNGURU, J.

The applicant in this application one Juakali s/o Alon @ Richard has brought this application under Section 361 (2) of the Criminal Procedure Act, Cap 20 Revised Edition 2019. In his application the applicant pray for the following orders:

- (i) That the court be pleased to allow the applicant to file the Notice of Appeal and appeal out of time.

The chamber application is duly supported by the affidavit duly sworn by the applicant. The respondent/ Republic opted not to file the counter affidavit.

When the application was called up for hearing the applicant appeared in person (unrepresented) while the respondent/ Republic enjoyed the service of Mr. Njoroyota the learned State Attorney. When the applicant was given an opportunity to submit in support of the application, briefly referred to the reasons for the delay to file notice of appeal set forth in his affidavit. He prayed the court to adopt his application and affidavit supporting the application.

Mr. Njoroyota learned State Attorney for the respondent did not object the application. He was of the submission that the application has been brought under the proper law. Further that the grounds set in the affidavit are genuine thus urged the applicant's application be granted.

Having considered the submissions of the parties and examined the grounds stated in the applicant's affidavit, the striking question in this application is whether there is any justification for this court to exercise its discretion under Section 361 (2) of the Criminal Procedure Act, Cap 20

(Revised Edition 2019). The said provision bestows this court with the discretion as it says:

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

It is trite that extension of time under the above provision is a matter of discretion on part of this court, but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case.

From the applicant affidavit, it is clearly noted that the applicant was willing and read to fully utilize the ten days' time of filing the notice of his intention to appeal, but he could not due to his transfer to three different prisons at ago. With due respect, I take this as a crucial point into account.

Apart from the above, I have also considered the particular circumstances of the applicant. Being inmate serving time in prison, the applicant had no control over his affairs; he was at the mercy of the Officer In charge of the prison or the prison authority. As stated at paragraph 3, 4 and 6 of the affidavit, the applicant had been transferred to different prisons and due to geographical locations of the prisons it made him

difficult to access and pursue his rights. In this regard, it is unfair to expect too much from him. See the case of **Buchumi Oscar V. Republic**, Criminal Appeal No. 295 "B" of 2011 Court of Appeal of Tanzania, **William Ndingu @ Ngoso V. Republic**, Criminal Application No. 3 of 2014 Court of Appeal of Tanzania and **Maneno Muyombe & Another V. The Republic**, Criminal Appeal No. 435 of 216, Court of Appeal of Tanzania (all unreported).

Basing on the foregone analysis, I am of the conclusion that the applicant's pursuit for extension of time has exhibited good cause. In the consequence I grant the application. The applicant to lodge his notice of appeal within fourteen (14) days from the date of delivery of this ruling and thereafter within forty five (45) days he shall lodge his petition of appeal.

It is so ordered.




B. D. NDUNGURU

JUDGE

06/08/2021