

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY OF MBEYA
AT MBEYA
MISCELLANEOUS CRIMINAL APPLICATION NO. 67 OF 2021
(Originating from the District Court of Momba at Chapwa,
Criminal Case No. 87/2018)**

RAYMOND NASIBU MWAIPALU.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

R U L I N G

Dated: 12th October & 12th October, 2021

KARAYEMAHA, J

This application has been preferred under section 361 (2) of the Criminal Procedure Code (Cap 20 R.E 2019) by the applicant who is seeking for extension of time to lodge the notice of appeal and appeal out of time. The application which is supported by the applicant's affidavit is not objected by the respondent.

Apparently, this application is not objected by the respondent.

I have gone through the applicant's affidavit and learnt that on being convicted on 03/07/2019, he expressed his intention to appeal. He signed the notice of appeal on 07/07/2017 through the Mbozi Prison Officers. On 23/10/2020, he received a copy of judgment and proceedings from the District Court of Momba at Chapwa. He averred further that after

conviction he was transferred to Ruanda prison to serve his sentence. He is shifting blames to the Court for delaying to supply documents. No sooner had he received the documents, than he was transferred to Songwe prison for agricultural activities. Since he was already time barred and was transferred to Songwe, got no chance to lodge the application for extension of time.

I have anxiously considered the application. The position of the law is settled that a party seeking an extension of time should show sufficient cause for his delay and account for each day of his delay. (See ***Benedict Mumello v Bank of Tanzania***, Civil Appeal No. 12 of 2002 Court of Appeal of Tanzania (Unreported) and ***Juluma General Supplies Limited v Stanbic Bank Limited***, Civil Application No. 48 of 2014 (unreported).

In this case, the relevant material provided by the applicant is a delay by the trial Court to supply the judgment and proceedings which are important documents in initiating the appeal process. The other reason put on the fore, is his two transfers from Momba to Ruanda Prison and finally to Songwe prison.

Illuminated by these factors, I shall right away accept the explanation that the applicant delayed to file his appeal within time because the District Court of Momba delayed to supply copies of judgment and proceedings to him. I am not alone in this position. In the case of

Mary Kimaro v Khalfan Mohamed, [1995] TRL 202, the Court made it clear that a delay in appealing caused by the applicant's delay in getting copies of documents to enable him or her to appeal, constitutes a good cause when it comes to extension of time.

It is also evident that the applicant has been vigilant pursuing his rights.

Consequently, and on the basis of the foregoing, I hold that the applicant has spectacularly succeeded to convince me that delays in lodging the notice of appeal and petition of appeal were caused by sounding reasons that fall in the realm of sufficient case. In view thereof, I allow the applicant's application.

This Court extends the time within which applicant may file notice of appeal to 15 days and appeal to 45 days from the date of this ruling.



It is so ordered.


J. M. Karayemaha
JUDGE
12/10/2021

Court: 1. Ruling pronounced in the presence of both parties as per the coram above.


J. M. Karayemaha
JUDGE
12/10/2021