

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**AT DODOMA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 32 OF 2021**

*(Originating from District Court of Manyoni at Manyoni in the Criminal Case No. 59 of 2020)*

**JUMA MNYAKANGA.....APPLICANT**

**VERSUS**

**THE REPUBLIC .....RESPONDENT**

**Date of last Order:** 25/08/2021

**Date of Ruling:** 08/09/2021

**RULING**

**KAGOMBA, J**

JUMA S/O MNYAKAGA (the applicant) applies to Court for an order of extension of time within which the applicant shall be allowed to file a notice of intention to appeal and a petition of appeal out of time. He also craves for any other order that this Honorable Court will deem fit to grant him.

The application is made by way of chamber summons preferred under section 361(2) of the Criminal Procedure Act, Cap 20 R.E 2019 and it is supported by the affidavit sworn by the applicant. Section 361(2) (supra) under which the application is made provides:

*"(2) The High Court May, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed"*

The said section 361 requires an appellant to give notice of his intention to appeal within ten (10) days from the date of finding, sentence, or order he intends to appeal against. This is in accordance to subsection (1) paragraph (a) of the said section of the law. In case of appeal against a sentence of corporal punishment the notice of intention to appeal has to be given within three (3) days only.

The cited provision of Section 361 (1) (b) also provides that, a person intending to file and appeal against a finding, sentence or order of a Court has to lodge his petition of appeal within forty-five days from the date of such finding, sentence or order. The time required for obtaining a copy of proceedings, judgment or order appealed against shall be excluded in computation of the 45 days limitation period.

As such section 361 (2) gives direction to this Court to admit an appeal notwithstanding the fact that the period of limitation prescribed under subsection (1) of section 361 has elapsed. There is however a condition imposed on Courts which should be observed while exercising the discretion granted under this section. The condition for admitting an appeal out of time is that the appellant has to show good cause before the Court can exercise that discretion.

In the supporting affidavit, the applicant state that after being convicted on the offence of incest by male by the District Court of Manyoni and sentenced to thirty years imprisonment, he expressed his desire to appeal to the prison authority. The appellant was admitted at Manyoni Prison. He states that he showed a notice of intention to appeal to the authority and the same was

filed on 19/10/2020 at Manyoni District Court. The applicant attached the said notice of intention to appeal to his affidavit and craved leave to refer to it as part of the supporting affidavit.

The Applicant further states in his affidavit that he was served with copies of the judgement and proceedings on 03/11/2020 and he immediately prepared the appeal. He says the appeal was handed over to prison authority for filing process as the prison authority is responsible for taking the filing action on behalf of appellants who are in prison. The appellant avers in his affidavit that while he was assured by the Manyoni prison authority that his appeal would be filed in time he was transferred from Manyoni prison to Isanga central prison. He says while leaving to his new prison, he asked the Manyoni prison authority whether a summons has been issue for him to appear for hearing of his appeal. He was told that his appeal could not be admitted for lack of notice of intention to appeal. He clarifies that the notice did not indicate the date of its admission and as such it was difficult to count when it was filed. It was after being informed of the fate of his notice of intention to appeal, he says, he sought legal advice on the way forward as he is a lay person with regard to law. He was thus advised to make application for extension of time which resulted in this application.

During the hearing of this application, the applicant was unrepresented. He prayed to adopt his chamber summons and the supporting affidavit as part of his submission to the Court.

On the respondent side, Senior State Attorney Mr. Mbogoro appeared for the Republic. Mr. Mbogoro submitted to the Court that the respondent has

no objection to the application as a right to appeal is a fundamental one. He said the respondent agrees with the applicant's prayer for extension of time to file his appeal out of time.

As I stated earlier, this Court has to determine whether a good cause has been shown by the applicant. The Court of Appeal in determining an application like this, which was however based on provision of the Court of Appeal Rules, with similar impact, stated in the case of KALUNGA & COMPANY ADVOCATES LTD VS NATIONAL BANK OF COMMORCE LTD, [2006] TLR 235 that;

*"The Court has discretion to extend time but such extension in the words of Rule 8 [now Rule 10] can only be done if "sufficient reason has been shown".*

From the cited decision, even if the application has received no objection from the respondent, it is still the duty of this Court to exercise the discretion given to it under section 361(2) of the Criminal Procedure Act, Cap 20 R.E 2019 judiciously. Of the so many decisions of the Court of Appeal on the issue of determination of "sufficient cause", I am of the view that what the Court of Appeal stated in the case of THE REGISTERED TRUSTEES OF THE ARCHIDIOCESE OF DAR ES SALAAM V. THE CHAIRMAN BUNJU VILLAGE GOVERNMENT AND 11 OTHERS, Civil Appeal No. 147 of 2006, is relevant to this application. The Court of Appeal stated in this case that:

*"it is difficult to attempt to define the meaning of the words "sufficient cause". It is generally accepted however, that the*

*words should receive a liberal construction in order to advance substantial justice, when no negligence, or in action or want of bonafides, imputable to the appellant”.*

In this particular application, the applicant has shown by affidavit that immediately after the judgment was pronounced against him, he took step to file a notice of intention to appeal. He averred that the process could not be finalized due to technical reason. The appeal was not admitted because there was no notice of intention to appeal as the same did not indicate the date of its admission. All this happened when the applicant was waiting for summons to appear in Court to hear his appeal. It also happened while the applicant was being transferred from one prison to another.

It is often said that each case shall be decided on its own merit. This application shall not be an exception. A difference has to be drawn between an applicant who applies for extension of time in a free environment and the applicant who does the same while in prison or other environment where his freedom is curtailed. In my opinion, the burden to show good cause should be less on a person in prison than a person who enjoys all the freedom to move, consult, file documents and make follow up on the same. It should suffice that the applicant took immediate steps to file his notice of intention to appeal even though the same had legal shortfalls. Records of the Court show that while the judgment was dated 19/10/2020, the date of filing intention to appeal was 20/10/2020. There was promptness in expressing his intention to appeal. The petition of appeal was submitted to this Court on 17/11/2020 by officer incharge of Manyoni prison which again shows that the intention was being taken further. Considering the environment the

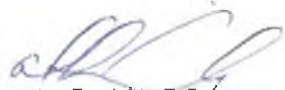


applicant is in, the delay should be excused in favour of achieving substantive justice.

In the upshot, I find good cause in this application. I thus allow it. The applicant is given forty-five days to file his notice of intention to appeal properly and to lodge his petition of appeal accordingly. The extended time to start running from the date of this order.

It is ordered accordingly.



  
ABDI. S. KAGOMBA  
**JUDGE**  
**08/09/2021**

