

**IN THE HIGH COURT OF TANZANIA  
TABORA DISTRICT REGISTRY  
AT TABORA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 2 OF 2020**

(Arising out of Criminal Case No.169 of 2018 of the Resident  
Magistrate Court of Tabora at Tabora)

**DENIS SIMON @ LUSHEKANYA .....APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

.....

**RULING**

.....

Date of Last Order: 24/09/2021

Date of Delivery: 01/10/2021

**AMOUR S. KHAMIS, J.**

Denis Simon @ Lushekanya was charged and convicted for armed robbery contrary to Section 287 A of the Penal Code Cap 16 R.E 2002 in the Resident Magistrates 'Court of Tabora.

The trial magistrate was convinced that the prosecution 's case was proved beyond reasonable doubts and thus sentenced him to thirty (30) years jail term.

Aggrieved, he issued a notice of appeal and applied for copies of proceedings and Judgment to enable him lodge an appeal.



In the present application, he moved this Court to extend time for lodging a notice of appeal and a petition of appeal.

The application was made by Chamber Summons under Section 361(2) of the Criminal Procedure Act, Cap 20 R.E 2002.

The affidavit sworn by Denis Simon @ Lushekanya supported the application. No counter affidavit was filed by the Republic.

Hearing proceeded through Video Conference facility where the applicant fended for himself.

Mr. Tumain Pius, learned State Attorney appeared for the Republic, supported the application.

The learned State Attorney contended that the reasons given by the applicant in paragraphs 4 and 5 of the affidavits were sound in law.

The applicant adopted contents of the affidavit and prayed for grant of the orders sought in the Chamber Summons.

The issue is whether the application disclosed a sufficient cause for extension of time.

Section 361(2) of the **CRIMINAL PROCEDURE ACT, CAP. 20, R.E. 2002** reads:

*“361 (2) The High Court may, for good cause, admit in appeal notwithstanding that the period of limitation prescribed in this Section has elapsed.*

Section 361 (1) (b) of the **CRIMINAL PROCEDURE ACT** (supra) provides that:

*“361 (1) subject to Subsection (2), no appeal from any finding, sentence or order referred to in Section 359 shall be entertained unless the appellant.*

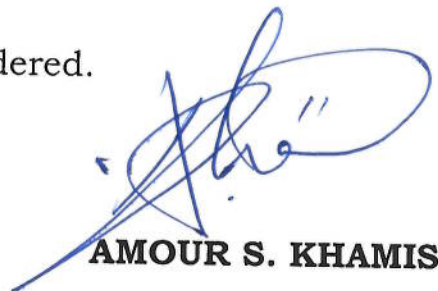
*(b) has lodged his petition of appeal within forty-five days from the date of the finding, sentence or order.”*

In the present case, the applicant filed notice of appeal on 5/12/2018 in the High Court, when his appeal was called on for hearing on 7/10/2019 it was struck out for wants proper notice of appeal, the notice of appeal was address to this Court instead of being addressed to the trial Court where the impugned judgment was given.

Considering that the reasons stated was a technical delay and it is acceptable in law as a notice of appeal was addressed to a wrong Court. I am satisfied that the technical error, constitute a good cause for extension of time.

In the upshot, the application is granted and leave is given to the applicant to present a notice of appeal within ten (10) days and a petition of appeal within thirty (30) days from date of delivery of this ruling.

It is so ordered.



**AMOUR S. KHAMIS**

**JUDGE**

**01/10/2021**

**ORDER:**

Ruling delivered in chambers in presence of Mr. Deusdedit Rwegira, learned State Attorney for the Respondent and the applicant in person. Right of Appeal explained.



**AMOUR S. KHAMIS**

**JUDGE**

**1/10/2021**