

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 69 OF 2021

(Originating from Resident Magistrate Court of Arusha at Arusha, Criminal Case No.
335 of 2019)

IDDI DOSA SALIMU NTANDU @ IDII..... APPLICANT

VERSUS

THE REUBLIC.....RESPONDENT

RULING

24/9/2021 & 8/10/2021

ROBERT, J:-

The Applicant, **Iddi Dosa Salimu Ntandu @ Idii**, invited this court under section 361 of the **Criminal Procedure Act**, Cap. 20 R.E 2019 to consider and grant an application for extension of time to file an appeal out of time. The application is supported by an affidavit sworn by the Applicant.

The Applicant was convicted and sentenced for charges of rape contrary to section 130(1)(2)(e) and 131(1) of the Penal Code, Cap. 16 R.E. 2002 at the Resident Magistrates' Court of Arusha. Dissatisfied with

the decision of the trial Court delivered on 4th February, 2021, he filed a Notice of Appeal on 8th February, 2021 and processed his petition of appeal through the prison authority but the said petition was not filed in Court despite his constant reminder. He decided to engage an advocate to take up the conduct of his intended appeal which led to the filing of this application seeking leave to file an appeal out of time.

The application was not contested by the Respondent. Hence, counsel for the Applicant moved the Court to grant the prayers sought in the chamber summons.

I am well aware that, there are no hard and fast rules in granting prayers for extension of time. However, for the Court to exercise its discretionary powers for extension of time, the Applicant must demonstrate sufficient reasons for the grant. (See **Royal Insurance Tanzania Limited vs. Kiwenga Strand Hotel Limited**, Civil Application No. 111 of 2009, CAT (unreported)).

Thus, in this application, the main issue for determination is whether the applicant has demonstrated sufficient cause for the delay.

In the case of **Lyamuya Construction Company Ltd vs. The Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2/10, CAT at Arusha, the


Court of Appeal laid down four principles that guides the court in exercising the discretion to extend time, the principle are:

- "a) The applicant must account for all the period of delay.*
- b) The delay should not be inordinate.*
- c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and*
- d) If the court feels that there are other sufficient reasons such as existence of point law of sufficient importance, such as the illegality of the decision sought to be challenged."*

In the present case, the Applicant submitted that he couldn't process his appeal on time because of delays caused by the prison authority where he was serving his sentence. Since the circumstances in the prison compelled the Applicant to depend on the Prison authority to file an appeal on his behalf, this Court considers that the alleged delay was out of his control. Further to this the Court has also considered that the alleged delay was not inordinate. In the circumstances, this Court finds and hold that the Applicant has managed to adduce sufficient reasons for the delay. Consequently, I grant this application. The Applicant should file his appeal within 21 days from the date of delivery of the copy of this order.

Order accordingly




K.N. ROBERT
JUDGE
22/10/2021