

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

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**MISC. CRIMINAL APPLICATION NO. 70 OF 2021**

(Originating from Resident Magistrate's Court of Arusha, Criminal Case No. 177 of  
2019)

**BARAKA WILLIAM .....1<sup>ST</sup> APPLICANT**

**ELISANTE MELIAKI .....2<sup>ND</sup> APPLICANT**

**VERSUS**

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

**RULING**

12/8/2021 & 10/9/2021

**ROBERT, J:-**

The two Applicants herein seek to be granted leave to file both the Notice of Appeal and Appeal out of time. The application is brought under the provisions of section 361 (2) of the Criminal Procedure Act, Cap. 20 (R.E 2019) and supported by a joint affidavit of the Applicants.

At the hearing of this application the Applicants were represented by **Mr. Emmanuel Laban Kileo**, learned counsel while **Ms. Alice Mtenga**, State Attorney appeared on behalf of the Respondent.

Submitting in support of the application, the Applicants prayed for their application to be granted based on the grounds stated in their joint affidavit. In their joint affidavit, the Applicants deposed that, they were charged with the offence of Armed Robbery C/S 287A of the penal Code, Cap 16 R.E 2002. After a full trial they were found guilty and sentenced to 30 years imprisonment. Dissatisfied, they filed a Notice of Appeal on time through the services of Mr. Erick Charles, advocate from M/S Northen Law Chambers.

As they were in jail, they waited for the appeal to be lodged but the communication broke down between them and their attorney hence, they had no other means of filing their petition of appeal. They managed to find another Attorney, Mr. Emmanuel Laban Kileo recently who agreed to prepare their petition of appeal, unfortunately, in the process he realized that the Notice of Appeal filed was defective which led to the present application seeking extension of time to file a proper Notice of Appeal and an Appeal out of time.

The Respondent wished not to object to this application after evaluating the reasons for the alleged delay as stated in the supporting affidavit.

Section 361 (2) of **the Criminal procedure Act**, Cap 20 (R.E 2019) provides that:

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

Powers to grant applications for extension of time are vested to the court, however such powers are discretionary which needs to be exercised judiciously and before granting prayers for extension of time the court must be satisfied that sufficient cause for the delay has been shown by the Applicant.


It is a known position of law that negligence made by an advocate through lack of diligence is not sufficient cause for extension of time. See the case of **Yusuph Same & Another vs. Hadija Yusuph**, Civil Appeal No. 01 of 2002 (Unreported). However, "every case must be decided on its own set of facts" (See the case of **Charles Chama & others vs. The Regional Manager TRA & Others**, Civil Appeal No. 224 of 2018 (unreported)).

In the instant case, I have taken into consideration the fact that the Applicants have been in custody throughout the process of appeal and thus they were unable to make regular follow ups to see if their petition was filed or not, and the fact that they entrusted their advocate to file their petition of appeal on their behalf who unfortunately turned them down. The court finds no reason to blame the Applicants on the alleged delay. Given the reasons for the delay as deposed in the Applicants affidavit and the fact that the Respondent herein wished not to resist the prayers in this application, I find no need not to allow this application.

Consequently, the application is allowed. The Applicants to file their appeal within 14 days from the date of delivery of the copy of this Ruling.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
13/11/2021