

**IN THE HIGH COURT OF TANZANIA**

**AT SONGEA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 30 OF 2021**

***(Originating from Criminal Case No. 88 of 2020 in the District Court of  
Namtumbo at Namtumbo)***

**BARTAZARI LUILO@ ODILO..... APPLICANT**

**VERSUS**

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

**RULING**

**Date of Last Order: 12/11/2021**

**Date of Judgment: 29/11/2021**

**BEFORE: S.C. MOSHI, J.**

The applicant prays for extension of time to file a notice of appeal and appeal out of time which is prescribed by law. The application is made by chamber summons supported by his affidavit under section 361(2) of the Criminal Procedural Act Cap. 20 R.E 2019. It is supported by the applicant's affidavit.

The respondent opposed the application, and filed a counter affidavit opposing this application.

During hearing of the appeal, the applicant appeared in person whereas the respondent was represented by Mr. Frank Chonja, State Attorney.

The applicant, in his submission as well as in his affidavit he said that he delayed due to reasons beyond his control. He said that he delayed to appeal because he is a prisoner, the fact that prisoners work every day Monday to Saturday from 6.00 am to 6.00 pm contributed to his failure to file a notice of appeal and an appeal within the time prescribed by the law. He also said that, he was moved from one prison to another to assist manual labour.

In his affidavit, he also said that the delay was contributed by the fact that he is a layman.

In reply, Mr. Chonja argued that the reasons advanced by the applicant are not good reasons since the applicant knew that he had a right to appeal from the date of delivery of judgement, he was supposed by any means to make efforts to have time to prepare his appeal and lodge it within time.

He submitted further that; at paragraph 3 of the applicant's affidavit, he has averred ignorance of the law. It was Mr. Chonja's submission that ignorance of law can't be a reason to disobey the law, he supported his argument by citing the case of **Hamim Hamis Totoro @Zungu Pablo and others vs. R** Cr. Appeal No. 121/ 2018 Court of Appeal sitting at Mtwara (Unreported). He also said that, section 361(2) of the Criminal Procedure Act Cap. 20 R.E 2019, states that extension of

time may be granted where the applicant illustrates good reasons. He contended that the applicant has failed to show good cause for failing to file the appeal within time.

The issue to be determined is whether the applicant has adduced good or sufficient cause for his delay.

Indeed, the law requires a person applying for extension of time to exhibit good cause for delay. See section 361(2) of the Criminal Procedure Act Cap. 20 R.E 2019 which provides as follows: -

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

There is a number of authorities to the effect that an application for extension of time may be granted upon the applicant showing good cause. See the case of **Mumello vs. Bank of Tanzania** [2006] E.A 227, where it was held that: -

*"It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse and that extension may only be granted where it has been sufficiently established that the delay was due to sufficient cause."*

Again, in the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported),

the Court of Appeal provided the following guidelines for the grant of extension of time: -

- 1. The applicant must account for all the period of delay.*
- 2. The delay should not be inordinate*
- 3. The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intended to take*
- 4. If the court feels that there are sufficient reasons/ such as the existence of a point of law of sufficient importance such as the illegality of the decision ought to be challenged.*

Furthermore, in the case of **Maneno Muyombe and Masumbuko Musa vs. R**, Cr. Appeal No. 435/2016, Court of Appeal sitting at Tabora, while explaining section 361(2) of the Criminal Procedure Act, Cap. 20 R.E 2019, the court held that although extension of time is a matter of discretion on the part of the High court but such discretion must be exercised judicially and flexibly with due regard to the relevant facts of the particular case.

I at the outset, agree with Mr. Frank Chonja that ignorance of law is not a good ground for extension of time. In the case of **Hamimu Hamisi Totoro @Zungu Pablo and two others vs R**, (Supra) the

Court of Appeal reiterated its position in the case **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015 Court of Appeal sitting at Iringa, (Unreported), where it held that; -

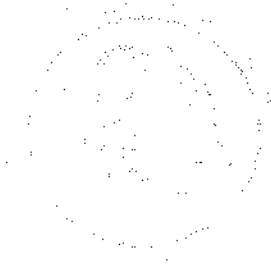
*"As has been held times out of number, ignorance of law has never featured as a good cause for extension of time".*

However, I find the first ground to be sufficient, the applicant being an inmate serving time in prison had invariably no control over his affairs and it is evident that he was necessarily at the mercy of the officer in charge of the prison for the preparation of his notice of appeal and his appeal. This is fortified by the fact that the applicant was moved from one prison to another.

In the upshot, I find that the applicant has adduced good ground to warranting this court to extend time. Thus, the application is granted. The applicant is given 10 days, from the date of this ruling to file his notice of appeal, and the intended appeal in accordance with the law.

It is so ordered.

Right of Appeal is explained.



  
**S.C. MOSHI**

**JUDGE**

**29/11/2021**