

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)
AT SUMBAWANGA**

MISC. CRIMINAL APPLICATION NO. 40 OF 2021

(C/O Mpanda District Court Criminal Case No. 131 of 2020)

EMMANUEL S/O JUMA @ MWASHIUYA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

Date: 13 & 13/12/2021

RULING

Nkwabi, J.:

The main prayer in this application, is for this court to allow the applicant to file a notice of intention to appeal to this court out of time. This application is based upon section 361(2) of the Criminal Procedure Act, Cap. 20 R.E. 2002.

The justifications for this application, could be seen in the unopposed applicant's affidavit which are the delay in lodging the notice of appeal was not to be blamed on him as he was in prison and he encountered several transfers whilst in prison.

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At the hearing of this application, the applicant appeared in person while the respondent was represented by Mr. John Kabengula, learned State Attorney. Meanwhile, the applicant reiterated his averment in the affidavit as his submissions. The respondent supported the application for reasons that it is the applicant's constitutional right to appeal and was prevented by reasons not to be shouldered on the applicant.

It is trite law that failure to file a counter affidavit is a signification that the application is not factually opposed, see **Mosses Ndosì v Suzana Ndosì, Misc. Land application no 117 of 2013** and **Emmanuel Gidahotay v Gambanyashita Muhale Misc land application no 41 of 2017** (both being unreported decisions of the High Court). Since the respondent does not object the application as the respondent neither filed a counter affidavit, nor by counter argument in oral submissions, the application ordinarily ought to be granted. The applicant has assigned sufficient reasons for the delay as the cannot be blamed on the same, rather it is the Prison officers who delayed lodging the notice of appeal, and the applicant too encountered prison transfers this application for lodgement of the notice of appeal out of time is granted. The Applicant is given 7 days within which to lodge his notice of appeal from the date of this ruling. The next steps of filing the applicant's

appeal should be in accordance with the Criminal Procedure Act, Cap. 20

R.E. 2019.

It is so ordered.

Dated at Sumbawanga this 13th day of December 2021.



J. F. NKWABI

JUDGE