

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

MISC.CRIMINAL APPLICATION NO. 208 OF 2021

*(Originating from Criminal Case No.197 of 2020 of the District Court of
Bagamoyo)*

SAHAU KONDO DIGALO.....APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

Date of last order: 20/10/2021

Date of Ruling: 10/11/2021

LALTAIKA, J.

This is a ruling for an application of extension of time to file a notice of appeal out of time. The application is brought under section 361(2) of the Criminal Procedure Act, Cap 20 R.E. 2019. The application is accompanied with a chamber summons and an affidavit of the applicant **Mr. SAHAU KONDO DIGALO**. The applicant is seeking for the following orders;

1. That this court to be pleased to grant the applicant leave to lodge a notice of intention to appeal and to file appeal out of time.
2. Any other relief this court may deem fit to grant.

When this matter was called for hearing the applicant appeared in person while Ms. Rachel Mwaipyana, learned State Attorney, appeared for the respondent.

On his part the applicant briefly submitted that he is requesting this court to grant him extension of time to appeal out of time. He stated that the delay was occasioned by prison authorities who control communication with detainees and inmates. This includes application documents, sent out by detainees therein to this court. Counsel for the Respondent Ms. Mwaipyana doesn't object this application.

The issue for determination when it comes to applications of this nature is whether the applicant has established sufficient cause for grant of extension of time. It is trite law that an application for extension of time is entirely in the discretion of the court. The same is granted upon establishing sufficient cause for such delay considered on a case-by-case basis.

I have deliberately gone through the applicant's explanation of reasons behind the delay. He put forth two grounds: one that he was transferred from Ubena prison to Ukonga Central prison while the notice of appeal was lodged at Bagamoyo District Court on the 19th April, 2021. The applicant contends that the prison officer in charge at Ukonga informed him that the notice of appeal was defective for bearing a wrong title. I have examined the said notice of appeal and it is, indeed, defective for having been addressed to a wrong court. Reason two is that he had no control with prison authorities who are responsible for onwards transmission of applications filed by detainees.

Having considered the circumstances and the reasons stated by the applicant in his affidavit, I find it appropriate to grant extension of time as prayed for. The reasons advanced appear to paint a picture that being a detainee with limited freedom and at a not-so-friendly environment, the applicant was unable to reverse the course of events.

To this end, I hold that he has moved the court to accept his application to file the appeal out of time. See the case of **Lymuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010 (unreported)**

From the foregoing, I am satisfied that the applicant has shown sufficient cause for this court to grant him extension of time. I hereby exercise the discretionary powers under section 361 (2) of the Criminal Procedure Act by allowing the application as prayed. The applicant should file the notice and petition of appeal within 21 days from the date of this ruling.

It is so ordered



E.I. LALTAIKA
JUDGE JUDGE

E.I. Laltaika

15/12/2021