

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 28 OF 2022

(Originating from Criminal Case No. 175 of 2020 at the Resident Magistrate's court of
Arusha)

ALLY S/O HAMISIAPPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

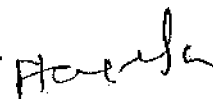
RULING

09.06.2022 & 16.06.2022

N.R. MWASEBA, J.

The applicant, Ally S/O Hamisi beseech this court for the following orders:

- i. That, this court be pleased to grant the applicant herein leave to appeal out of time, against the judgment of Resident Magistrate Court of Arusha (Hon. A.R Ngoka, SRM) delivered on 20th day of August, 2021.
- ii. Any other Order (s) the Honourable Court deems proper to grant in the circumstances of the Application.



The application was supported by two affidavits sworn by Mr. Peter Kamyalile, counsel for the applicant and Mr. Abbas Paul Hamisi, brother of the applicant. The respondent did not object the application.

In their affidavit supporting the application, it was deponed that the delay was caused by the applicant's brother who promised him he will process an appeal and look for an advocate while he was in jail but he did nothing. They added that, since the applicant was in jail, he lost contact with his relative who was looking for a lawyer and due to his limited freedom in prison he failed to lodge an appeal within the time. Further to that, an affidavit revealed that the intended appeal has overwhelming chances of success due to some irregularities which need to be looked upon by this court.

At the hearing of the application which was conducted orally, the applicant was represented by Advocate Asante Hosea whilst the respondent enjoyed the legal service of Ms. Lilian Kowelo, learned State Attorney.

Supporting his application, Mr. Hosea prayed to adopt their two affidavits to be part of their submission. Apart from what was reiterated in their affidavit, he added that apart from losing communication with his relative, the trial court did not impose a sentence to an applicant which is illegal and against **Section 312 (2) of the Criminal Procedure Act, Cap 20**

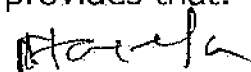
Asante Hosea

R.E 2019. It was his further submission that, the applicant is in jail without knowing his exactly term for him to serve. He cited the case of **Benard S/O Lamech Vs Republic**, Criminal Appeal No. 117 of 2019, High Court Mbeya and **Joseph Sweet Vs Republic**, Criminal Appeal No. 11 of 2017, Court of Appeal sitting at Mbeya (both – Unreported) to support his arguments, and prayed for an application to be allowed.

In her side, the learned State Attorney for the respondent did not object the application, she only added that the reasons adduced by the applicant are sufficient as per **Section 361 of the Criminal Procedure Act**. She further submitted that the above provision allows the court to grant an application for extension of time if the applicant has shown good cause. That according to the reasons submitted by the applicant and their affidavits they don't dispute that the applicant has established good cause so she prays that their application be granted.

Having heard the submissions from both parties and glancing on the applicant's affidavit I am convinced that the applicant has established good cause.

Section 361(2) of the Criminal Procedure Act provides that:



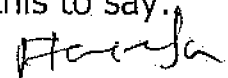
"The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed."

The same was held in a case of **Daudi S/O Haga Vs Renatha Abdon Machafu**, civil Reference No. 19 of 2006 (Unreported) that:

"Where an extension of time is sought consequent to a delay the cardinal question is whether sufficient reason is shown for the delay."

Having the above legal position, the issue to me is what amounts to sufficient or good cause? In our present application the applicant stated two reasons for his delay to file an appeal. The first point is lost of communication with his relatives and the second point is illegality in the appealed judgment.

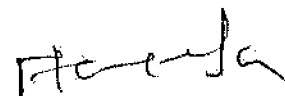
Starting with the first point, the applicant avers that his elder brother promised him that he will look for an advocate who will assist him in his appeal but never did so. And for him being in prison he lost communication with his relatives so he could not appeal within the prescribed time. I concur with the learned counsel for the applicant that this is a good cause as it was stated in the case of **Joseph Sweet Vs. The Republic** (Supra) in which the Court of appeal had this to say:



"As correctly, submitted by the learned Senior State Attorney, the fact that the appellant deposed under paragraph 3 of his affidavit, he lost contact with his relatives who were organising for a lawyer to represent him, suffices to be a good cause. The appellant is a prisoner. He has not and could not have a means to reach out his relatives to know what has befallen upon them. Looking at the Ruling of the High Court this reason was not considered, it would have granted the extension of time to the appellant."


Being guided by the above authority, the fact that the applicant is in prison and that he lost communication with his relatives just like the facts in the above case it is a good cause for granting this application. This ground being a good cause and since there is no objection from the respondent, I do not see the reason of discussing the second ground as it will not fault the grant of this application.

In the final analysis, the application is hereby granted. The applicant is given 30 days from the date of this order to file his intended appeal to this court.

A handwritten signature in black ink, appearing to be 'H. E. J. A.', is written over the text of the court order.

It is so ordered.

DATED at **ARUSHA** this 16th Day of June 2022.


N.R. MWASEBA

JUDGE

16.06.2022

