

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MOROGORO
AT MOROGORO**

MISC. CRIMINAL APPLICATION NO. 04 OF 2022

(Originating from Economic Case No. 22 OF 2019, in the District Court of
Ulanga, at Mahenge)

GERARD DAMIAN.....APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

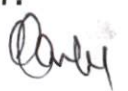
RULING

25th & 29th April, 2022

CHABA, J.

Basically, this is an application for extension of time lodged by the applicant so that he may be allowed to file notice of intention to appeal and petition of appeal out of time. The applicant intends to challenge, according to the chamber summons, the decision (Judgment) of the District Court of Ulanga, at Mahenge dated 17/03/2021. The application has been preferred under section 361 (2) of the Criminal Procedure Act [Cap. 20 R.E. 2019) (the CPA). The application is made by way of Chamber Summons supported by affidavit sworn by the applicant where he has stated his reasons for delay.

During hearing of the application, the applicant appeared in person, unrepresented while the Respondent / Republic was represented by Mr. Lordgud Eliamani, the learned State Attorney.



In his submission, the applicant briefly submitted that though he is a lay person, but he prayed this court to grant and allow him to file Notice of Intention to Appeal and Petition of Appeal out of time so that he can challenge the decision of the District Court of Ulanga, at Mahenge delivered on 17/03/2021. The applicant narrated the reasons why he delayed to file his appeal within the prescribed time. In his affidavit, he states that though he filed the Notice of Intention to Appeal within ten (10) days as required by the law, but the court records that is, judgment and the trial court proceedings were delayed to be transmitted to him through Prisons Authority. He received the documents on 23/09/2021 and thereafter prepared his grounds of appeal by himself and submitted to the respective court through the Prisons Authority. Indeed, his documents were sent to the High Court of Tanzania, at Dar es Salaam District Registry.

In reply to the applicant's application, Mr. Lordgud Eliman, learned State Attorney supported this application on the ground that the application was filed in line with the provisions of the law and he has good cause in his affidavit.

I have considerably perused the documents and considered the submissions made by the applicant to find out whether this application has merit or not. In this application which was not opposed by the Respondent / Republic, the vital question is whether the applicant has advanced sufficient reasons for this court to consider his application for extension of time to file Notice of Intention to appeal out of time. Going through the affidavit sworn by the applicant, it is clear that the applicant who is detained in prisons has advanced sufficient reason for the delay as

such delay was beyond his control. It is trite law that where any party is seeking for an extension of time to file a Notice of Intention to Appeal and Appeal out of time, he or she is required to advance sufficient reasons in his or her affidavit before the court can consider and allow such an application. This position of the law was arrived at in many precedents including the cases of **Martha Khotwe v. Miston Mwanjamila**, Civil Appeal No. 5 of 2014 at Mbya HC and **Regional Manager, Tanroads Kagera v. Ruaha Concrete Company Ltd**, Civil Application No. 96 of 2007 (CAT) (All unreported). In the case of **Regional Manager, Tanroads Kagera v. Ruaha Concrete Company Ltd** (supra), the Court held inter-alia that:

"the test for determining an application for extension of time, is whether the applicant has established some material amounting to sufficient cause or good cause as to why the sought application is to be granted".

In determining an application for extension of time, the court is duty bound to consider if the applicant has established some material amounting to sufficient cause or good cause as to why the sought application is to be granted. The best reason is that the applicant was not the source of delay.

I have considered the nature of the accusation and the sentence meted by the trial court. At paragraph 2, 3, 4 and 5 of the affidavit, the applicant averred that he was charged, convicted and sentenced with the offence of UNLAWFUL POSSESSION OF GOVERNMENT TROPHIES C/S 86 (1) and (2) (b) OF THE WILDLIFE CONSERVATION ACT NO. 5 OF 2009 AS



AMENDED BY THE WRITTEN LAWS (MISCELLANEOUS AMENDMENT) ACT NO. 04 OF 2019 and sentenced to serve twenty (20) years imprisonment. Discontented with the decision of the trial court and taking into account that he is detained in prisons as a prisoner, he filed the Notice of Intention to Appeal within the prescribed time through the Prison Authority, but the trial court proceedings and the judgment thereof was supplied to him almost six (6) months later from the date of decision. In that view, it is my finding that the applicant has portrayed the reasons for delay. Indeed, I am convinced that the applicant through his affidavit has clearly demonstrated that he had sufficient reasons for delay and being at the prison also it has contributed in his delay to file the appeal.

As to the question what it amounts to "*sufficient cause*" this was clearly expounded by the Court of Appeal of Tanzania in the case of and **Tanga Cement Company Limited v. Jumanne D. Massanga and Amos A. Mwaiwanda**, Civil Application No. 6 of 2001 and other cases including **Samwel Sichone Applicant v. Bulele Hamisi**, Civil Application No. 08 of 2015; and **Regional Manager Tanroads Kagera v. Ruaha Concrete Co. Ltd**, Civil Application No. 96 of 2007. In the case of **Tanga Cement Company Limited v. Jumanne D. Massanga and Amos A. Mwaiwanda (supra)**, the Court (Nsenkela, J.A, As he then was) held:

"what amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly, the absence of any valid explanation for delay, lack of diligence on the part of the applicant."



From the foregoing, and upon considered the reasons for delay advanced by the applicant, frankly speaking, I have no reason to dis-grant the prayers sought by the applicant. I am of the considered view that this application for extension of time is meritorious. In my view, it is thought prudent for the case to have a second eye by the superior court in respect of the accusation levelled against the applicant.

In the result, I proceed to grant extension of time to file Notice of Intention to Appeal and Petition of Appeal out of time as prayed. The applicant shall file his Notice of Intention to Appeal within fourteen (14) days from the date of this ruling and Petition of Appeal within twenty-one (21) days after the date of Notice. **It is so ordered.**

DATED at MOROGORO this 29th day of April, 2022.



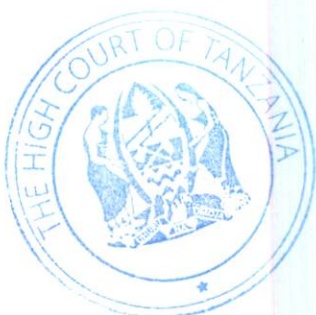
M. J. Chaba

Judge

29/04/2022

Court:

Ruling delivered at my hand and Seal of this Court in Chambers this 29th day of April, 2022 in the presence of the Ms. Jamila Mziray, learned State Attorneys for Respondent / Republic and the Applicant who appeared in person, unrepresented.



M. J. Chaba

Judge

29/04/2022