

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

MISC. CRIMINAL APPLICATION NO. 25 OF 2021

(Arising from Criminal Case No. 266 of 2018 of the District Court of Chato at Chato)

MASUMBUKO S/O MATHIAS-----APPLICANT

VERSUS

THE REPUBLIC-----RESPONDENT

RULING

*Last order: 14.06.2022
Ruling date: 29.06.2022*

M.MNYUKWA, J.

This is an application for leave to appeal out of time against the decision of the District Court of Chato which was delivered on 24th August 2018 in Criminal Case No. 265 of 2018 before Hon. Kato RM. The application is brought by way of chamber summons under sections 313, 361(2), 362, and 373 of the Criminal Procedure Act, Cap. 20 R.E 2019, and supported by the affidavit of the applicant, Masumbuko s/o Mathias.



The application was argued orally whereas the applicant appeared in person, unrepresented and the Respondent, that is the Republic was represented by Ms. Sabina Choghogwe, the learned state attorney.

The applicant was the first to submit whereas, he prays this court to adopt his affidavit and prayers on the chamber application to form part of his submissions. The applicant, Mr. Masumbuko s/o Mathias pressed me to grant an extension of time to file an appeal out of time claiming that he was not given right to be heard at the trial court and was wrongly convicted without evidence. He, therefore, prays this court to grant him leave to appeal out of time.

Responding to the application, Ms. Sabina Choghogwe upon going through the applicant's affidavit and hearing the applicant's submissions, she conceded to the applicant's application for an extension of time to file an appeal out of time for the reasons she gave forth.

First, she refers to the applicant's affidavit where the applicant on paragraph 2 and 3 stated that, after he was convicted by the trial court in Criminal Case No 265 of 2018, to serve 30 years in prison, he showed his intention to appeal to the head of the prison believing that his intention was processed. The applicant was transferred to different prisons and therefore failed to make a follow-up of his appeal process.

The respondent counsel refers to section 363 of Criminal Procedure Act Cap. 20 RE: 2019 which provides for procedures of appeal by the inmates, in the applicant's affidavit, he insisted to have followed the procedure but was not acted upon by the responsible prison officers.

She went on that, the applicant had also exhibited his effort and intention, for it is on record that on 13.11.2019 when placed at Kilimo Prison at Sumbawanga, he wrote a letter to the Resident Magistrate in charge of Chato requesting for court records that he can appeal which was not attended to. The applicant again attempted while at Sumbawanga prison on 09.01.2020, to remind the Chato District Court to supply the copy of judgement and proceedings but he was not availed with them. She agrees that the efforts by the applicant above show that he has the intention to appeal against the decision of the trial court and for the reason that he is in prison it was hard for him to make followups.

She added that, section 361(2) of the Criminal Procedure Act, Cap 20 R.E 2019 gives this court power to grant the applicant extension of time to file his appeal out of time if he had advanced sufficient reason that prevented him to appeal within the prescribed time provided by the law. She cited the case of **Selina Chibago vs Sinihaji Chibago**, Civil Application No. 182 of 2007, CAT in which it was stated that the court can



extend time when sufficient reasons are given and reasons depend on the circumstance of each case. Reverting to the applicant's application, Ms. Sabina was to the conclusion that based on the circumstances encountered by the applicant, the reasons fronted by the applicant are sufficient for this court to extend time. She retires support and prays for the applicant's application to be allowed.

After the submissions of both parties, I am now placed to determine this application as to whether this court to grant the application as sought for the applicant to appeal out of time or to deny the application. As it was cited in the applicant's chamber summons, the applicant moved this court under section 361(2) of the Criminal Procedure Act, Cap 20 R.E 2019. This is the provision of law that gives this court power to extend time upon good cause shown by the applicant. Section 362(2) of the Criminal Procedure Act Cap 20 R.E. 2019 provides: -

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

The legal position is settled that, the court has the discretion to grant an application for an extension of time upon the sufficient cause advanced by the applicant. I agree with the respondent cited case of **Selina Chibago vs Sinihaji Chibago** Civil Application No. 182 of 2007, CAT

whereas the same principle was cited in In the case of **Blueline Enterprise Ltd vs. East Africa development Bank** Misc. Civil Cause No. 135 of 1995, CAT it was held that; -

"...it is trite law that the extension of time must be for sufficient cause and that the extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, upon sufficient cause being shown which has to be objectively assessed by the court..."

In the application at hand, I have gone through the applicant's affidavit and the parties' submissions, it is evident from the applicant's affidavit that, immediately after conviction he was sent to Chato prison and that upon admission, he expressed his intention to appeal against the decision of Chato District Court to the officer in charge of the prison. It is also noted that, before his intention to appeal could be acted upon, the applicant was transferred to Sumbawanga prison. The records project that once the applicant was at Sumbawanga Prison, he maintains his intention to appeal as he took an effort to push his will and wrote a letter to request for copies of the trial court pleadings on 13.11.2019, which was not acted upon. Again, it is on records that on 09.01.2020 the applicant again wrote another letter requesting a copy of the judgment specifically for appeal purposes.



From the above, I should point out that prisoners serving time in prison invariably have no control of their life when they are in prison as the same is controlled by the prison officers. As evidenced from the applicant's pleadings specifically on paragraph 2, 3 and 4 of his affidavit, he fought his battle enough to have his rights realised in control of the prison officers to no avail. The applicant acted on his intention to appeal severely, and to this end, he is out of time, therefore, obliged to file this application for leave.

Based on the applicant's submissions, and upon examining his affidavit, I am satisfied that the applicant had the intention to appeal rightly from the day he was sentenced. Also, before I ruled out, I also considered the respondent's submissions who also conceded to the applicant's application and I find out that granting this application will not in any way prejudice the respondent taking into consideration that an appeal is a constitutional right of which a person cannot be lightly denied when the higher court is there to determine the applicant's rights.

In **Allison Xerox Silla v. Tanzania Hobours Authority**, Civil Reference No. 14 of 1998 Court of Appeal of Tanzania at Dar es Salaam (unreported), as quoted in **Attorney General v. Masumin and Another**, Misc. Civil Application No. 11 of 2015 it was stated that: -




"...where an extension of time is sought consequently to a delay the cardinal question is whether sufficient reason is shown for the delay; other considerations such as the merit of the intended Appeal would come in after the applicant has satisfied the Court that the delay was for sufficient cause."

To that end, based on my findings above, I am convinced that the applicant has advanced sufficient reasons for this court to grant an extension of time.

In the final analysis, I find that the applicant has managed to show good cause upon which this Court can exercise its discretion to grant an extension of time to file an appeal out of time. Therefore, the applicant is granted 45 days from the date of this Ruling to appeal to this Court.

It is so ordered.




M.MNYUKWA

JUDGE

29/06/2022

Court: Ruling delivered in the presence of the applicant and the respondent's counsel.


M.MNYUKWA

JUDGE

29/06/2022