

**IN HIGH THE COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA**

MISC. CRIMINAL APPLICATION NO.34 OF 2022

*(Originating from District Court of Lindi at Lindi in Criminal Case No.28
of 2021)*

AHMAD RASHID LIONJO..... APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Ruling: 27/7/2022

LALTAIKA, J.:

The applicant **AHMAD RASHID LIONJO** is seeking to move this court under section 361(1) and (2) of the Criminal Procedure Act [Cap. 20 R.E. 2019] to grant him an extension of time within which to file a notice of appeal and to appeal out of time. This application is supported by an affidavit affirmed by the applicant on 9/5/2022. The respondent, on her part, has not filed a counter affidavit to resist the application.

During the hearing, the applicant appeared in person and fended for himself while Mr. Enosh Kigoryo, learned State Attorney appeared for the respondent.

The applicant appeared to be rather brief. He prayed that his affidavit be adopted and form part of his submission. The applicant further argued that his delay is greatly caused by the fact that his liberty is curtailed in the prison. In reply, Mr. Kigoryo did not oppose the application revealing absence of counter affidavit signified that the republic had no objection. The learned State Attorney further argued that the fact that the applicant is in prison is enough for this court to grant him his prayers. In rejoinder, the applicant had nothing to add.

It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse and that, extension of time may only be granted where it has been sufficiently established that the delay occasioned has been accounted for with sufficient and/good cause.

In the present application, the reason for the delay as relied for by the applicant are featured under paragraph 3 and 4 of his affirmed affidavit. A quick read through the cited paragraphs reveals such reasons as: **one**, failure by prison officers of Lindi Prison to liaise and file the notice of appeal in the trial court and petition of appeal in this on the prescribed statutory time. **Two**, the applicant as a prison inmate failed to access legal aid facility and make follow up of his documents.

I am convinced that, these two reasons made the applicant unable to follow up on his notice of intention to appeal and obtain necessary

documents for his intended appeal to this court. Being a prisoner whose freedom to communicate directly with the registry of the trial court or this court had been curtailed, he naturally had no means of proving that his notice was filed by prison officers or the admission officer as was promised. The statement of the admission officer that the notice of appeal was nowhere to be seen proves negligence on the part of the prison authority and not the applicant. This also signifies that the applicant had real intended to appeal to this court. The question which pokes my mind is, are these reasons sufficient/cause to move this court to grant the application? I now turn to address this question which is the crux of this application.

Our law does not define what amounts to good cause. However, in the case of **Regional Mnager Tanroads Kagera vs RUAHA Concrete Company Ltd.,** Civil Application No.90F 2007 (Unreported) it was held that: -

"Sufficient reasons cannot be laid down by any hard and fast rule. This must be determinedly reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time."

I am convinced that the applicant has advanced good cause to move this court to grant his prayer. The chain of event depicted in the applicant's affidavit and his submission plus the submission of the respondent shows that the applicant made his intention to appeal on time though his thrust was curtailed by inactive admission officer of Lindi Prison who lost the document. Based on that observation, I hold that the applicant has explained sufficient reasons for delay to warrant this court to exercise its discretion to grant extension of time sought. The prayer is granted.

Therefore, the applicant is hereby given ten (10) days to lodge his notice of intention and to file his appeal within forty-five (45) days effective from the date of this ruling.

It is so ordered.



E.I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

JUDGE

27.7.2022

Court:

This ruling is delivered under my hand and the seal of this Court on this 27th day of July, 2022 in the presence of Mr. Enosh Kigoryo, learned

State Attorney and the applicant who has appeared in person,
unrepresented.



E. I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E. I. Laltaika", written over a horizontal line.

JUDGE

27.7.2022