

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MBEYA DISTRICT REGISTRY**

**AT MBEYA**

**MISC. CRIMINAL APPLICATION NO. 39 OF 2022**

*(Originating from the Court of Resident Magistrate of Songwe at Vwawa in Criminal Case No. 92 of 2019)*

Between

**REMMY RASHID MARANDU ..... APPLICANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**RULING**

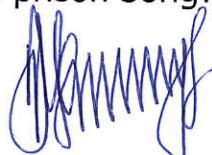
*Date of last order: 18<sup>th</sup> July, 2022*

*Date of ruling: 21<sup>st</sup> July, 2022*

**NGUNYALE, J.**

This is an application for extension of time by the applicant within which to lodge notice of intention to appeal and petition of appeal to this court against the judgment of the Court of Resident Magistrate of Songwe at Vwawa in Criminal Case No. 92 of 2019. It is made under section 361(2) of the Criminal Procedure Act [Cap 20 R: E 2019] now R: E 2022 (the CPA). It is supported by the affidavit of the applicant Remmy Rashid Marandu. The respondent Republic did not file counter affidavit.

It is averred in the affidavit that after conviction and sentence the applicant was transferred from Mbozi prison Songwe to Ruanda Prison at



Mbeya, then he was transferred to Isanga prison at Dodoma. It is further alleged that the delay was beyond the reason under his control.

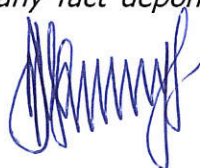
When the application came for hearing, the applicant appeared in person unrepresented while the respondent republic appeared through Mr. Mgaya learned State Attorney, Mr. Mgaya opposed the application.

The applicant submitted that the delay was due to his transfer from one prison to another of different region, hence he was unable to get a copy of judgment.

In reply Mr. Mgaya submitted that the applicant has failed to advance sufficient reason for the delay of each day. He cited the case of **Mtesigwa Lugola v Attorney general & Another**, Civil Application No. 34/6 of 2017. He added that two-year delay is long period and the applicant did not show what happen for that time.

I have considered the submission of both parties, I again considered submission made by Mr. Mgaya in the bar, as stated earlier they did not file counter affidavit to oppose the application if they wished to do so. Even the submission made are not on point of law of which is allowed even without counter affidavit. effect of failure to file counter affidavit in opposition of the averments in the affidavit was stated in the case of **Rosemary Stella Chambejairo v David Kitundu Jairo**, Civil Reference No. 6 of 2018, where the court held that;

*'Now an affidavit in reply being a substitute of oral evidence ought to be sworn if a party intends to counter any fact deposed in the affidavit in*



*support unless the point is legal, then even without an affidavit in reply, that point can be addressed. In the present situation, respondent's submissions were in response to what was deponed in the affidavit sworn by Ms. Rwechungura elucidating what transpired, but without any affidavit in reply to that effect. The respondent's submission under the circumstance was akin to testimony from the bar, the practice abhorred and discouraged by the Court, ...'*

That said submission made in the bar by the learned State Attorney is rendered valueless.

Indeed, under section 361(1)(a)(b) of the CPA the intending appellant is required to give notice of intention to appeal within ten (10) days from the decision sought to be impugned and lodge a memorandum of appeal within forty-five days from the date of the impugned decision. However, under subsection (2) of section 361 of the CPA vests the High Court with the mandate to admit an appeal notwithstanding that the period of limitation prescribed in that section has elapsed upon good cause for the delay being shown.

Now power to extend time is in the discretion of the court upon sufficient reason being shown. The power has to be exercised judiciously not capriciously or arbitrarily. The term 'good cause' has no single definition but it can be interpreted depending on the circumstances of each case. In **John William Mpai v R**, Criminal Application No. 76/01 of 2018, Dar Es Salaam the Court stated that;





*'What constitutes good cause cannot be laid down by any hard and fast rules. The term "good causes" is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion.'*

In this application the applicant in his affidavit deposed that after conviction he was transferred to Ruanda prison at Mbeya and then to Isanga Prison at Dodoma which made his effort to get copies of judgment out of his control. The question would be does transfer from one prison to another constitute a sufficient reason. In the case of **Shija Marko v Republic**, Criminal Appeal No. 246 of 2018, CAT at Mwanza, the court held that;

*'Transfer of a prisoner from one prison to another has been considered by the Court to be a reason constituting good cause for extension of time.'*

Yet in another case of **Renatus Muhanje v. Republic**, Criminal Appeal No. 417 of 2016, the court held that;

*'That good cause for delay should be considered bearing in mind the circumstances of each particular case, it is my view that, in the circumstances of this case, cross-country transfer of the applicant to two not only different Prisons but very far from the trial court made it difficult for the applicant to process appeal including lodging of notice of appeal. This reason therefore constitutes good cause for extension of time.'*

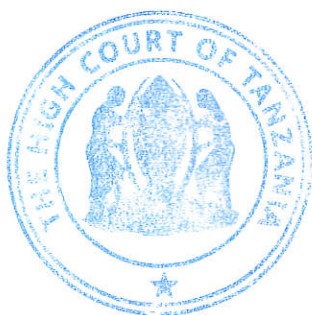
As illustrated earlier affidavit evidence that the applicant was being transferred from one prison to another were not controverted by a counter-affidavit from the respondent Republic. The averments therefore, remained to be true account of what transpired and thus constituted sufficient reasons for extension of time. The applicant being a prisoner was not a free agent and thus could not have been expected to do

anything more than what he did. Furthermore, there is no evidence when the copies of proceedings and judgment was ready for collection and if at all it was served to applicant who was in prison for purpose of taking steps to file his appeal. in that circumstance the court has no any option than to believe the state of affairs stated by the applicant.

For the above given reasons, I am satisfied that the reasons for the delay as put forward by the applicant in support of his application constitute sufficient reasons and the application is allowed. The applicant through the prison authorities, should give the notice of his intention to appeal within ten (10) days from the date of the delivery of this ruling.

Furthermore, through the prison officers if the applicant is not in possession of proceedings and judgment, should request for a copy of the proceedings and the judgment sought to be impugned. Upon receipt of the proceedings and judgment, thereafter should lodge the appeal within forty-five (45) days from the date he received the documents.

DATED at MBEYA this 21<sup>st</sup> day of July, 2022



**D.P. Ngunyale**  
**Judge**