

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

MISC. CRIMINAL APPLICATION NO. 6 OF 2021

*(Originating from Criminal Case No. 200 of 2020; in the District
Court of Kilombero, at Ifakara)*

MSAFIRI CLEMENT MPENDA..... APPLICANT

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

R U L I N G

20th & 24th June, 2022

CHABA, J.

The Applicant, **Msafiri Clemence Mpenda** filed the instant application seeking leave to file Notice of Appeal and Petition of Appeal before this court out of time. It originates from the decision of the District Court of Kilombero, at Ifakara in Criminal Case No. 200 of 2020 delivered on the 27th day of May, 2021. In that decision, the Applicant was convicted with the offence of cattle stealing contrary to section 268 (1) and (3) of the Penal Code (Cap. 16 R. E. 2019) (the Penal Code) and sentenced to serve fifteen (15) years imprisonment.

To access his right to appeal against conviction and sentence imposed by the trial court, the applicant on 29th day of October, 2021

lodged this application seeking for enlargement of time as alluded to above. The application has been preferred by way of Chamber Summons made under section 361 (2) of the Criminal Procedure Act (Cap. 20 R. E. 2019) (the CPA). The applicant has also appended an affidavit which outlines the reasons for delay to file the Notice of Appeal and Petition of Appeal within the statutory period.

When the application was called on for hearing, the Applicant appeared in person, unrepresented, whereas Mr. William Dustan, learned State Attorney entered appearance on behalf of the Respondent / Republic.

Being a lay person, the Applicant requested the court to consider his application on merit. On his part, Mr. William Dustan learned State Attorney did not object the application. He conceded that, the applicant truly obtained a copy of judgement out of time, which is counted as good cause for the court to grant the prayers sought by the applicant.

I have impassively considered the application and the submissions advanced by both parties. It is important to note that, an appeal against decision originating from the District Court like this one, is governed by section 361 (1) of the CPA (supra). This provision requires that Notice of

Appeal and Petition of Appeal in relation to decision made by the District Court, be filed within **ten days** and **forty-five days** from the date of the decision, respectively. However, this Court is mandated to extend the time within which to file Notice of Appeal and Petition of Appeal under section 361 (2) of the Act. The law provides that:

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

From the above provision of the law, it follows therefore that admission of an appeal out of time is not automatic. The court is / has vested with the discretionary power to extend the time for filing notice of appeal and petition of appeal. However, it is trite law that such discretion has to be exercised judiciously by considering whether there is good cause or otherwise. Usually, the court determines good cause if the applicant advances or assigns good reasons for failure to file Notice of Appeal and Petition of Appeal in time.

Thus, from the foregoing, the burning issue is whether or not this application has merit.

According to the applicant's Affidavit, the applicant was convicted on

27th May, 2021. As depicted by the provisions of the law under section 361 (1) of the CPA (supra), his Notice of Appeal and Petition of Appeal ought to have been filed in Court within 10 days and 45 days from the date of conviction, respectively. Para 4 of his affidavit, the applicant states, I quote:

"3. That, the applicant, being aggrieved by said conviction, sentence and judgement as a whole, intended to appeal to the High Court of Tanzania, but due to the technical reason, knowledge of legal requirement and deliberate failure of the District Court to supply the applicant the pertinent case documents failed to file the notice of appeal in time.

4. That, the applicant when proceeding in the lower court (sic) was unrepresented, and according to him the right of appeal explained to him did not include information as to the time when he should have lodged his notice of appeal, therefore what he did was only to request for copies of judgement and proceedings to facilitate his appeal, which he obtained on 18th August 2021.

Copy of the applicant's letter requesting to be supplied with relevant documents as stated in the preceding paragraph 4 hereof is appended hereto and marked "ANNEXTURE MCM-2" forming part hereof". End of quoting.

The Applicant has explained in his affidavit that the reasons for delay to file the Notice of Appeal was due to late supply of the copies of the trial

court judgement and proceedings on time a resultant of which he failed to lodge his appeal on time. Explaining the reasons why he delayed to file his Notice of Appeal and Petition of Appeal in time, the applicant averred that, firstly; he requested for a copy of judgement on 21st June, 2021 and he wrote another letter on 28th July, 2021 reminding the trial court to supply the same. Secondly, the copy of judgment was supplied to him on the 18th August, 2021. In my considered opinion, the reasons advanced by the applicant are sufficient to be termed as good cause to allow him lodge his Notice of Appeal and Petition of Appeal out of time as the source of delay was not caused by him. Paragraphs 3 and 4 of the applicant's affidavit gives an account for his delays.

It is trite law that, the court when considering whether good causes have been advanced by the applicant or otherwise, it has a duty to satisfy itself that the applicant has shown good cause which prevented him / her from lodging the said application / appeal within the prescribed time and in doing so, the one who is seeking for enlargement of time he or she must give an account for every day of delay via his or her affidavit. See the case of **Jumane Bilingi v. Republic**, Criminal Application No. 20 of 2014 (Unreported) when cited with approval the case of **Aluminium Africa Ltd v. Abdallah Dhilljali**, Civil Appeal No. 6 of 1990

(Unreported).

In the upshot, and to the extent of my findings, I am satisfied that the applicant has demonstrated and shown good cause to warrant this court grant the sought prayers for an extension of time within which to file Notice of Appeal and Petition of Appeal out of time, which I hereby do. The Applicant to file his Notice of Appeal within twenty-one (21) days from the date of this ruling, and shall file his Petition of Appeal not later than 22nd day of July, 2022 from the date of this ruling. **Order accordingly.**

DATED at MOROGORO this 24th day of June, 2022.



M. J. Chaba

Judge

24/06/2022

Court:

Ruling delivered at my hand and Seal of this Court in Chambers this 24th June, 2022 in the presence of Applicant who appeared in person, unrepresented and Mr. Jamila Mziray, learned State Attorney for the Respondent / Republic.



M. J. Chaba

Judge

24/06/2022