

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MOROGORO

AT MOROGORO

MISC. CRIMINAL APPLICATION NO. 15 OF 2021

(Originating from Criminal Case No. 165 of 2020, in the Resident Magistrate's Courts of Morogoro, at Morogoro)

SHIDA OMARY @ SHOMARY.....APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

R U L I N G

4th July, 2022

CHABA, J.

The Applicant **Shida Omary @ Shomary** has filed the instant application seeking for an extension of time within which to file her petition of appeal out of time against the judgment issued by the Resident Magistrate's Court of Morogoro, at Morogoro dated 17th June, 2021. The Application has been preferred under certificate of urgency coupled with the Chamber Summons made under Section 361 (2) of the Criminal Procedure Act [Cap. 20 R.E. 2019) (the CPA) and it is supported by an affidavit deposed by the applicant wherein she has stated her reasons for delay.

When the application was called on for hearing today on the 4th day of July, 2022; the applicant appeared in person, unrepresented whereas the Respondent / Republic enjoyed the service of Ms. Thedora Mlelwa, learned State Attorney.

During hearing of this application, the applicant reiterated what she stated in her affidavit and prayed to adopt her affidavit so that the same may form part and parcel of court proceedings. On her part, Ms. Thedora Mlelwa, learned State Attorney did not seek to object the applicant's application. Explaining why she delayed to file her petition of appeal, the applicant averred in her affidavit from paragraphs 4 - 7 to the effect that apart from filed her Notice of Appeal within the prescribed period of time, that is 10 days, from the date of her conviction and sentence on 17/06/2021, she was also supplied with the copies of judgment and trial court proceedings through the Prison Authority. Afterwards, she gave her relatives so that could find an advocate to assist her prepare the said Petition of Appeal, but unexpectedly they disappeared together with the copies of judgment and trial court proceedings. Later on, she struggled to get other copies where she managed to file her petition of appeal on 22/11/2021 and the same was admitted and marked as Criminal Appeal No. 15 of 2021. However, this appeal did not survive longer in court because it was dismissed by this court on the ground that the same had been filed out of time.

The applicant argued that, since she was not the source of delay to file her appeal within the prescribed period of time and it was beyond her control, she prayed this court to consider and grant her prayers accordingly.

I have dispassionately 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 the decision made by the District Court must be filed within **ten days** and **forty-five days** from the date of the impugned decision, respectively. However, this Court has discretion power to extend the time within which the applicant may file Notice of Appeal or Petition of Appeal under Section 361 (2) of the Criminal Procedure Act [Cap. 20 R.E. 2019]. 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.”

However, it should be noted that admission of an appeal out of time is not automatic. As hinted above, the court has power to extend the time for filing Petition of Appeal upon considering the reasons advanced as grounds for delay. According to the law, the so-called discretionary power has to be exercised judiciously by considering whether there is good cause or otherwise. Normally, the court determines good cause if the applicant advances or assigns good reasons for failure to file Petition of Appeal within the prescribed period of time.

Having considered the instant application, I am satisfied that the applicant advanced and sufficiently has assigned good cause and reasons for delay as shown in her affidavit from paragraphs 4 to 7. Thus, in the circumstance of this case, I find no reason(s) why should I refuse to grant the applicant's application while has demonstrated and shown good cause to warrant this court grant the prayers sought, which I hereby do. Therefore, the Applicant is hereby directed and ordered to file her Petition of Appeal within thirty (30) days from the date of this ruling. **Order accordingly.**

DATED at **MOROGORO** this 4th day of July, 2022.


M. J. CHABA

JUDGE

4/07/2022

COURT:

Ruling delivered at my hand and Seal of this court in Chamber's this 4th day of July, 2022 in the presence of the Applicant who appeared in person, unrepresented and Ms. Theodora Mlelwa, Learned State Attorney who entered appearance for the Respondent / Republic.




M. J. CHABA

JUDGE

4/07/2022