

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

**MISC. CRIMINAL APPLICATION NO. 01 OF 2022**

*(Originating from Resident Magistrate Court of Katavi at Mpanda in Criminal Case No. 39 of 2021)*

**KENED S/O KILONGOZI.....APPLICANT**

**VERSUS**

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

**RULING**

*Date of Last Order: 09/ 05/ 2022*

*Date of Judgement: 13/ 07/ 2022*

**NDUNGURU, J**

This is a ruling in respect of an application made under **section 361 (1) b (2) of the Criminal Procedure Act, Cap 20, RE. 2019**, by the applicant, Kened s/o Kilongozi, seeking leave for extension of time, that he be allowed to appeal to this court outside statutory time required by law. The application is supported by the affidavits sworn, drawn and filed by the applicant himself and that of the Officer Incharge of Mpanda Remand Prison, Mpanda.

When the application was called on for hearing, the applicant appeared in person, unrepresented; whereas, the respondent *cum* republic had a legal services of Ms. Marietha Magutta – learned state attorney. The hearing proceeded orally.

Arguing for the application, the applicant prayed to this court to adopt the affidavit he filed and his application be allowed. He had nothing more to add.

In reply, Ms. Magutta resisted the application by the applicant as she submitted that the reason advanced is afterthought. She said the judgement was delivered on 04/10/2021, the applicant application was signed 20/12/2021, but filed in Jan 2022. That the reason being the computer was out of use. She submitted further that it was not specifically stated at what time the computer was broken, thus she found the applicant has not shown any sufficient cause and she prayed for the dismissal of the application.

I have gone through this court's records and the respective submissions by both parties. The question for determination is whether the applicant has been able to advance sufficient reason for the delay.

It is a cardinal principle that when the time has expired, there must be explanation or material upon which the court may exercise its discretion to extend it. See decisions in the case of **Regional Manager Tanroads Kagera versus Rinaha Concrate Co. Ltd; Civil Application No. 96 of 2007 CAT, unreported and Godwin Ndeweri and Karoli Ishengoma versus Tanzania Indil Corporation (1995) TLR 200** and **Republic versus Yona Kaponda and 9 others (1985) TLR 84.**

In the instant application, the applicant through his averment in paragraph 3 of the affidavit has advanced the reason for the delay being that, failure by the Mpanda Remand Prison to comply with section 361 (1) (b) of CPA due to computer breakdown.

On her part, Ms. Magutta had an objection to the application by the applicant as she informed the court that the applicant has not established sufficient reasons for the application. The applicant has not specifically stated at what time the computer was broken; thus, the reason is afterthought.

As well this application by the applicant is also supported by the supplementary affidavit of the Officer Incharge of Mpanda Prison, Mpanda

who support what was stated by the applicant in his affidavit as to be true. Also, that the delay to file the appeal out of time was attributed by his office.

With that view, I find that the appellant has advanced good cause for the failure to appeal within prescribed period of time. For that reason, I allow the application. The applicant is given a period of forty-five (45) days within which to file petition of appeal to this court.

It is so ordered.



  
**D.B. NDUNGURU**

**JUDGE**

**13. 07. 2022**