

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY

AT TABORA

MISC. CRIMINAL APPLICATION NO. 45 OF 2021

(Originating from Nzega District Court Criminal Case No. 213/2011)

HAMIS S/O MAHONA.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

Date: 15/8/2022 & 19/8/2022

BAHATI SALEMA , J.:

Before this court, the applicant **HAMIS S/O MAHONA** prays to this court for an extension of time to lodge a petition of appeal against the decision of the District Court of Nzega -Tabora in Criminal Case No.213 of 2011.

The application has been brought under section 361(2) of the Criminal Procedure Act, Cap. 20 [R.E 2022] and section 14 of the Law of

Limitation Act, Cap.89, and it is supported by an affidavit of **HAMIS S/O MAHONA**.

It is deposed in paragraphs of the affidavit in support of the application as can be summarized that ;

- i. For want of security, because of the length of the custodial sentence imposed on him, he was relocated to Uyui Central Prison at Tabora. That, until at the time of his relocation to Uyui Central Prison at Tabora as stated in paragraph 4 of this affidavit, the trial court had not availed him with the appeal materials necessary for him to marshal his appeal to this court.
- ii. While at Uyui Central Prison, he lodged Misc. Criminal Application No. 178 of 2015 seeking extension of time to lodge a petition of appeal out of time, which was dismissed for not showing good cause for the delay, UTAMWA, J dated 25/04/2016.
- iii. That, aggrieved, he appealed to the Court of Appeal of Tanzania vide Criminal Appeal No. 141 of 2017, which was allowed on 30/04/2021. He complied with the terms of A1 by giving a fresh notice of appeal to the trial court and prepared a petition of appeal to this court.

- iv. The notice and petition of appeal are attached and marked as A2 and A3 respectively. Leave of the court is hereby sought for the same to form part of this affidavit.
- v. The appeal was ready for online registration as indicated on A3 but it could not be registered because of the problem with connectivity at Uyui which started on 02/06/2021 until it was resolved on 25/06/2021 by the ICT specialists from TTCL. Fearing being out of time, the appeal was transmitted manually to the Registry of this court at Tabora. Upon perusing the documents, it was found that the copy of the judgment sought to be appealed against was not attached to his appeal. Therefore, the appeal was returned to comply since the law requires that the copy of the judgment sought to be appealed against must be accompanied by the appeal. An effort to trace the copy of the judgment started immediately and on 20/12/2021 the same was retrieved, albeit incomplete from the record of the appeal before the court of appeal, namely Criminal Appeal No. 141 of 2017. That, by the time A4 was retrieved; he was out of time extended through A1. Hence, this application.

Hence, the application for an extension of time to this court, which vide Misc. Criminal Application No.45 of 2021.

When the matter was called for hearing, the applicant was unrepresented while Ms. Alice Thomas, learned State Attorney for the Republic.

The applicant being layperson, prayed to this court to adopt the affidavit to form part of his application.

In reply, the respondent supported the application. The respondent submitted that the applicant's affidavit in paragraphs 4 and 11 have provided sufficient reasons to grant the application. She prayed to this court to grant the application as prayed.

In rejoinder, the applicant had nothing more to add.

Having carefully heard submissions from both parties, the issue is whether the application has merit.

Section 361(2) of the Criminal Procedure Act, Cap. 20 provides for the extension of time upon sufficient reasons.

The court has gone through paragraphs 4, up to 11 of the affidavit and found that the applicant has shown sufficient reasons for the extension of time. As rightly conceded by the State Attorney, the applicant through his affidavit has adduced sufficient cause for his delay.

Therefore, this court is satisfied that the applicant has shown sufficient reasons for extension of time and it is hereby granted. The applicant is to lodge a notice of 10 days and a petition of appeal within 30 days.

Order accordingly.



A. BAHATI SALEMA

JUDGE

19/08/2022

Ruling delivered under my hand and seal of the court in the Chamber, this 19th day of August, 2022 in the presence of both parties, via virtual court link.



A. BAHATI SALEMA

JUDGE

19/08/2022

Right to appeal is hereby explained.



A. BAHATI SALEMA

JUDGE

19/08/2022