

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISC. CRIMINAL APPLICATION NO.22 OF 2022**

*(Originating from District Court of Mtwara at Mtwara in Criminal Case  
No.161 of 2020 before Hon. L.J. Jang'andu, RM)*

**ATHUMANI JUMA SELEMANI @CHINA..... APPLICANT**

**VERSUS**

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

**RULING**

*15/8/2022 & 24/8/2022*

**LALTAIKA, J.:**

The applicant **ATHUMANI JUMA SELEMANI @CHINA** is seeking to be granted extension of time within which to file a Petition of Appeal out of time. The applicant has moved this court under Section 361 (2) of the Criminal Procedure Act, [Cap. 20 R.E. 2019]. This application is supported by an affidavit affirmed by the applicant on 19/1/2021. It is noteworthy that his application has not resisted by a counter affidavit from the respondent Republic.

During the hearing of the application, the applicant appeared in person, unrepresented while Mr. Enosh Kigoryo, learned State Attorney appeared for the respondent Republic. On the part of the applicant, he made a very short submission that his affidavit be adopted and form part

of his submission. The applicant submitted further that the delay to file the Petition of Appeal was because he got the copy of the proceedings and impugned judgment late. The applicant stressed that there was no one to assist him in prison while preparing an appeal required legal assistance.

In response, Mr. Kigoryo did not object the application. The learned State Attorney stressed that this court should agree to extend time. However, the learned State Attorney insisted that this court should take cognizance of the fact that the notice had already been filed but the applicant is obliged to start afresh by lodging it at the subordinate court so that it can prepare the records accordingly. Mr. Kigoryo argued that the Notice should be titled THE HIGH COURT since the Court of Appeal had indicated that it is necessary to title that way and now the law has been amended to that effect.

Having gone through the submissions of both Parties, it is trite law that, an application for extension of time is entirely in the discretion of the court to grant or refuse it. Moreover, extension of time may only be granted where it has been sufficiently established that the delay was with the sufficient/good cause. In the instant application, the reasons for the delay by the applicant are found in his affidavit particularly under paragraphs 4, 5 and 6. The main reasons grasped from those paragraphs

of the affidavit of the applicant are **one**, late supply of the certified copy of the proceedings. **Two**, being a prisoner, his liberty is curtailed thus cannot access legal facilities and make follow up of the copy of proceedings on his own. Indeed, these two reasons made the applicant unable to lodge his Petition of Appeal on time as prescribed by the law.

The question now which pokes my mind is whether the reasons advanced reasons amount to good cause. The law does not define what amounts to good cause. However, in the case of **Regional Manager, Tanroads Kagera vs. RUAHA Concrete Company Ltd.** Civil Application No. 90F 2007 (Unreported) it was held that;

*"Sufficient reasons cannot be laid down by any hard and fast rule. This must be determinedly reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time."*

On the matter at hand, I can safely say that the applicant has advanced good cause for his delay to lodge and file petition of appeal. The chain of events explained in the applicant's affidavit shows how the applicant was unable to follow up the copy of the proceedings due to circumstances beyond his control as a prisoner, he has not given up. I hold that, the applicant has explained sufficient reasons for delay to warrant this court to exercise its discretion to grant the enlargement of time sought.

Therefore, the applicant is given forty-five (45) days to file his Petition of Appeal from the date of this ruling.

It is so ordered.



**E. LALTAIKA**

A handwritten signature in black ink, appearing to read "E. Laltaika", written over a horizontal line.

**JUDGE**

**24.8.2022**

**Court:**

This ruling is delivered under my hand and the seal of this Court on this 24<sup>th</sup> day of August, 2022 in the presence of the Mr. Enosh Kigoryo, the learned State Attorney and the applicant who has appeared in person, unrepresented.

**E. LALTAIKA**



A handwritten signature in black ink, appearing to read "E. Laltaika", written over a horizontal line.

**JUDGE**

**24.8.2022**