

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IRINGA DISTRICT REGISTRY

AT IRINGA

MISCELLANEOUS CRIMINAL APPLICATION NO. 32 OF 2022

CHRISTOPHER LALIKA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

(Originating from the decision of the District Court of Mufindi at Mafinga
(Hon. E Uphoro- R.M) in Economic Case No. 03 of 2021)

RULING

Date of Ruling: 12.09.2022

S.M. KALUNDE, J.:

Aggrieved by the decision of the District Court of Mufindi at Mafinga (hereinafter "the trial court") in **Economic Case No. 03 of 2021**, the applicant herein has moved this court under the provisions of section 361(2) of **the Criminal Procedure Act [Cap. 20 R.E. 2022]**. He is seeking for the following orders:

- "(a) That, this Honourable Court be pleased to grant extension of time within which the Applicant can file a notice of appeal and appeal out of time.
- (b) Any other reliefs this Honourable Court may deem just to grant."

The application is being supported by an affidavit dully sworn **by MR. RAYMOND BYOMBARILWA**, learned advocate for the applicant. On their part the respondent, Republic did not file any counter affidavit.

Before me at the hearing date the applicant enjoyed the legal representation of learned advocate Mr. Raymond Byombarilwa while the Respondent, Republic was represented by learned State Attorney **Ms. Pienza Nichombe**.

In support of the application Mr. Byombarilwa sought to adopt the affidavit in support of the application and submitted that being aggrieved by the decision of the trial court in Economic Case No. 03 of 2021 the applicant dully lodged before this Court Criminal Appeal No. 09 of 2022. He added that on 10.08.2022 the said appeal was struck out by this Court (**Hon. Utamwa, J**) for being incompetent. The counsel added that, in accordance with the affidavit file in support of the application, after the matter was struck out the appellant, who is a prisoner, commenced the process to seek legal representation and that upon his engagement he filed the present application. The counsel prayed that the application be granted as the applicant has demonstrate diligence and hence good cause.

On her part **Ms. Nichombe**, informed the Court that the respondent was supporting the application on the ground that the application was competent in terms of section 361(2) of the CPA. She also added that substances in the affidavit demonstrated a genuine case for extension of time.

This is an application for extension of time within which to lodge a Notice of Appeal to appeal out of time; and petition of appeal out of time. The application is preferred under the provisions of section 361(2) of **the Criminal Procedure Act, Cap. 20 R.E. 2019** and supported by an affidavit dully sworn by the appellant.

Having heard the parties, the question for my determination is whether the application has merits. To start I wish to point out that the applicants right of appeal is provided for section 359 (1) of the CPA which provides *inter alia* that:

*"359.-(1) Save as hereinafter provided, **any person aggrieved by any finding, sentence or order made or passed by a subordinate court** other than a subordinate court exercising its extended powers by virtue of an order made under section 173 of this Act **may appeal to the High Court** and the subordinate court shall at the time when such finding, sentence or order is made or passed, inform that person of the period of time within which, if he wishes to appeal, he is required to give notice of his intention to appeal and to lodge his petition of appeal.*

(2) Any appeal to the High Court may be on a matter of fact as well as on a matter of law.

(3) Notwithstanding the provisions of subsections (1) and (2), no appeal shall lie against or be made in respect of any preliminary or interlocutory decision or order of a subordinate court unless such decision or order has the effect of finally determining the criminal charge."
[Emphasis is mine]

To exercise the rights under section 359 (1) above the applicant is required to comply with the provisions of section 361(1)(a) which requires a notice to be lodged within ten (10) days from the date of the finding, sentence or order. Thereafter the applicant would be required to file the appeal within forty five (45) days from the date of obtaining a copy of the proceedings, judgment or order appealed against. The respective section reads:

*"361.- (1) Subject to subsection (2), **no appeal from any finding, sentence or order** referred to in section 359 shall be entertained **unless the appellant-***

*(a) **has given notice of his intention to appeal within ten days from the date of the finding, sentence or order** or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and*

*(b) **has lodged his petition of appeal within forty five days from the date of the finding, sentence or order**, save that in computing the period of forty five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded.*

*(2) **The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.**" [Emphasis is mine]*

The requirement to comply with section 361 of the CPA was emphasised by the Court of Appeal in the case of **Sospeter Lulenga v**

The Republic, Criminal Appeal No. 107 of 2006 where the Court (Munuo, J.A) stated thus:

"To exercise the right of appeal stipulated under the provisions of section 359 (1) and (2) of the Criminal Procedure Act, 1985 Cap 20 R.E. 2002, the appellant had to comply with the mandatory provisions of Section 361 of Cap 20 ..."

However, if the applicant is precluded by any reason whatsoever, from filing the appeal or notice within the time prescribed under section 361, this court may extend time upon good cause being shown by the applicant. This is in accordance with section 361 (2) of the CPA.

Undeniably, in the present case, the records before the Court show that, being aggrieved by the decision of the trial court in Economic Case No. 03 of 2021 the applicant filed before this Court Criminal Appeal No. 09 of 2022. The said appeal was lodged within time. However, it was struck out by this Court on 10.08.2022 for being incompetent. Apparently, the Court, **suo motu**, raised the question of competence of the Notice of Appeal lodged therein. It is also not in dispute that the present application was lodged on 24.08.2022 upon securing legal representation. That was a lapse of barely two weeks after the initial appeal which lodged on time had been struck out. I hold that the applicant acted diligently, firstly, by learning that, perhaps he needed legal representation and thereafter lodging the application of time.

I am aware that without the present application no appeal would lie to this Court. The requirement to lodge a notice and an appeal was emphasized by the Court of Appeal in **Binaisa Phares Sumwa Rasta & 2 Others vs. Republic**, Criminal Appeal No. 61 of 2015 (unreported) where the Court (Ndika, J.A) stated:

"The provisions of Section 361 (1) of the CPA are definite and unmistakable. They require an intending appellant, aggrieved by a subordinate court's decision, to not only lodge his notice of intention to appeal within ten days from the date of the impugned decision, but also file the intended appeal within forty-five days from the date of the decision."

Having considered the substance contained in the affidavits and the fact that the respondent is not challenging the application I will proceed to grant the same. That said, the applicant is granted ten (10) days within which to lodge the Notice of Appeal. In addition to that I grant the applicant twenty eight (28) days within which to file a competent appeal.

It is so ordered.

DATED at IRINGA this 12th day of SPETEMBER, 2022.




S. M. Kalunde

JUDGE