

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF SUMBAWANGA

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 36 OF 2022

(Originated from Criminal Case No. 130/2021 Kalambo District Court at Matai)

PATRICK S/O KIPATU.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of last order: 22/08/2022

Date of Ruling: 08/09/2022

NDUNGURU, J.

The applicant in this application one Patrick s/o Kipatu has brought this application under Section 361 (2) of the Criminal Procedure Act, Cap 20 Revised Edition 2019. In his application the applicant pray for the following orders:

- (i) That the court be pleased to allow the applicant to file notice of appeal and Appeal out of time.

(ii) Any other order (s) the court may deem fit and just to grant.

The chamber application is duly supported by the affidavit duly sworn by the applicant and the affidavit sworn by Officer in charge of Sumbawanga Prison. The reasons for the application are contained in the affidavit of the applicant. The reason is several transfers from one prison to another. This reason has been authenticated by the affidavit of the Officer in charge of the prison. Para 2 of the affidavit of the Officer in charge of the prison states that having convicted the applicant has been transferred to several prisons including Kitete prison within Nkasi District, Mollo prison and later to Sumbawanga remand prison.

When the application was called up for hearing the applicant appeared in person (unrepresented) while the respondent/the Republic enjoyed the service of Ms. Maguta the learned State Attorney. When the applicant was given an opportunity to submit in support of the application briefly prayed the court to adopt his reason set forth in his affidavit.

The learned State Attorney for the respondent resisted the application. In her submission she stated that the applicant has not shown genuine. That in his affidavit the applicant has not mentioned the prisons

he had been transferred to. Further that the transfer alone cannot stand as a good cause for extension of time. She urged the application be dismissed.

Having considered the submissions of the parties and examined the grounds stated in the applicant's affidavit, the striking question in this application is whether there is any justification for this court to exercise its discretion under Section 361 (2) of the Criminal Procedure Act, Cap 20 (Revised Edition 2019). The said provision bestows this court with the discretion as it says:

"The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has lapsed."

It is trite that extension of time under the above provision is a matter of discretion on part of this court, but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case.

From the applicant's affidavit, it is clearly noted that the applicant had been transferred now and then from one prison to another. This fact has been authenticated by the Officer in charge of the prison. To my view

this reason is tangible because it made it difficult for the applicant to make follow up of his matters. All the time he looked foreign at a particular prison.

Apart from the above, I have also considered the particular circumstances of the applicant. Being inmate serving time in prison, the applicant had no control over his affairs; he was at the mercy of the Officer in charge of the prison or the prison authority. As stated in his affidavit, that he had been transferred from one prison to another several times, he could not have chance to check and follow up the matter properly. In this regard, it is unfair to expect too much from him. See the case of: **Buchumi Oscar V. Republic**, Criminal Appeal No. 295 "B" of 2011 Court of Appeal of Tanzania, **William Ndingu @ Ngoso V. Republic**, Criminal Application No. 3 of 2014 Court of Appeal of Tanzania and **Maneno Muyombe & Another V. The Republic**, Criminal Appeal No. 435 of 216 Court of Appeal of Tanzania. (All unreported).

Basing on the foregone analysis I am of the conclusion that the applicant's pursuit for extension of time has exhibited good cause. In the consequence I grant the application. The applicant to lodge his notice of appeal within fourteen (14) days from the date of delivery of this ruling

and thereafter within forty five (45) days he shall lodge his petition of appeal.

It is so ordered.



D. B. Ndunguru
D. B NDUNGURU

JUDGE

08/09/2022