

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN HIGH THE COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)**

AT MTWARA

MISC. CRIMINAL APPLICATION NO.19 OF 2022

*(Originating from the High Court of Tanzania at Mtwara in Criminal
Appeal No. 2 of 2018)*

SAIDI ALLY MMOLE..... APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Last Order: 24/8/2022

Date of Ruling: 5/10/2022

LALTAIKA, J.:

The applicant, **SAIDI ALLY MMOLE**, is seeking extension of time within which to lodge the Notice of Appeal and Memorandum of Appeal to the Court of Appeal of Tanzania out of time. The applicant is moving this court under Section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2002] now the Revised Edition of 2019 and Rule 47 of the Court of Appeal Rules 2009. This application is supported by an affidavit affirmed

by the applicant on 06/08/2021. It is noteworthy that this application has not been resisted by a counter affidavit of the respondent.

At the hearing, whereas the applicant appeared in person, unrepresented while the respondent was represented by Mr. Enosh Kigoryo, learned State Attorney. The applicant opted the respondent to commence with the submission so that he would re-join later.

On his part, Mr. Kigoryo submitted that the application is for extension of time to lodge a notice and memorandum of appeal to the Court of Appeal. The learned State Attorney supported the application. He further invited this court to exercise its discretion by taking into consideration the legal position and requirements for granting the application. The learned State Attorney stressed that Rule 68 of the Court of Appeal Rules provide for the time frame within which to lodge notice to the Court of Appeal.

In a short rejoinder, the applicants submitted by thanking the respondent for not having the objection on his application. The appellant further contended that he was convicted in 2018 on the offence of armed robbery and sentenced to thirty years of imprisonment term. The appellant argued that he indicated his intention to appeal against the sentence but it was difficult to obtain the necessary document for lodging his appeal. He also submitted that the main difficult reason was due to the inability of the admission office in the prison authorities to make a

proper follow-up. The appellant maintained that he complained to the prison authorities, and they advised him to write a letter.

Furthermore, the appellant submitted that he was transferred to Lindi Prison from Lilungu Prison. He insisted that the transfer gave him more difficulties. The appellant further submitted that he wrote many letters but he never received the reply. In addition, the appellant argued that he even complained to the court officials who have going to visit the prisoners in the prisons but they just promised him to make follow up. To this end, the applicant prayed this court to grant his application.

Having gone through the submissions of both parties, I am inclined to decide on the merits or otherwise of the application. It is trite law that an application for extension of time is entirely in the discretion of the court to grant or not. Furthermore, extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient or good cause.

In the present application, the reasons for the delay are featured under paragraphs 3,4,5,6 and 7 of the affirmed affidavit of the applicant and vide his oral submission. The main reasons as can be grasped from the aforementioned paragraphs plus the oral submission are that **One**, inability of the Prison Authority to liaise and file the Notice of Appeal on time at the appropriate registry of the Court of Appeal. **Two**, the transfer of the applicant from Lilungu Prison to Lindi Prison made it difficult for the applicant to know the progress of his application and **three**, inability of Prison officials and Court official to reply the applicant's complaint

letters. **Four**, it is well known that the applicant is a layman whose liberty is curtailed hence could not be able to make follow-up on his own on the former Notice of Appeal.

In view of the above observation, it is clear that the delay was caused by factors beyond the ability of the applicant to control and they cannot be blamed on him.

The next issue I am called upon to resolve is whether or not the reasons advanced by the applicant amount to good cause. Our law does not define what amounts to good cause. However, in the case of **Reginal Manager, TANROADS Kagera v. Ruaha Concrete Company Ltd** Civil Application No90F 2007 (Unreported) it was held that:

“Sufficient reasons cannot be laid down by any hard and fast rule. This must be determined in 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.”

As to the matter at hand, I can safely say that, the applicant has advanced good cause for his delay to lodge both his Notice of Appeal to the Court of Appeal and also lodge the Memorandum of Appeal to the same court out of time. Indeed, the chain of events explained in the applicant's affidavit and also his submission shows that in spite of inability to follow up on his case due to the circumstances beyond his control as a prisoner, he has not given up. I am convinced that the applicant has not only advanced good cause but also exhibited great diligence in pursuing his appeal. He has not shown any apathy, negligence or sloppiness in the

prosecution he intends to take as emphasized in the case of **Lyamuya Construction Co. Ltd vs. Board of Registered trustees of the Young Women Christian Association of Tanzania** Civil Application No 2 of 2020 [2011] TZCA4.

For the foregoing reasons, I find and hold that the applicant has advanced sufficient reasons for the delay to warrant this court to exercise its discretion to grant the enlargement sought. Therefore, the applicant is hereby given thirty (30) days to lodge his Notice of Appeal to the Court of Appeal of Tanzania effective from the date of this ruling.

It is so ordered.



E.I. LALTAIKA

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JUDGE

5.10.2022

Court:

This ruling is delivered under my hand and the seal of this Court on this 5th day of October, 2022 in the presence of Ms. Florence Mbamba, learned State Attorney and the applicant who has appeared in person, unrepresented.



E. I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E. I. Laltaika".

JUDGE

5.10.2022