

IN THE HIGH COURT OF TANZANIA

(MOROGORO DISTRICT REGISTRY)

AT MOROGORO

CRIMINAL APPLICATION NO. 30 OF 2022

(Arising from Economic Case No. 89 of 2018 of the Resident Magistrate's Court of
Morogoro, at Morogoro)

LUFINO GABRIEL @ MWAKYELA APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

R U L I N G

11th & 30th November, 2022

CHABA, J.

The applicant, Lufino Gabriel, filed the instant application seeking for enlargement of time within which to file an appeal out of time. The application has been brought under section 361 (2) of the Criminal Procedure Act [CAP. 20 R. E, 2019], now [R. E, 2022] (the CPA). It is supported by an affidavit sworn by the applicant himself. Apparently, this application is not resisted by the Respondent/Republic.

When the application was called on for hearing on 11th day of November, 2022, the applicant appeared in person, and unrepresented, while the



Respondent/Republic was represented by Mr. Emmanuel Kahigi, learned State Attorney.

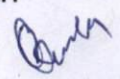
On being invited to argue his application, the applicant firstly prayed the court to adopt his affidavit and form part and parcel of his submission. He highlighted further that the reasons for delays are found on his affidavit at paragraphs 4 - 8. He lastly, prayed the court to allow his application so that he can file his appeal out of time.

On the other hand, the learned State Attorney who entered appearance for the Respondent/Republic, informed this court that the respondent is not opposing the application and that he was of view that the applicant's prayer be granted as prayed.

In rejoinder, the applicant had nothing useful to add.

Having considered the applicant's application, his affidavit and the parties' oral submissions, I have noted that, when the applicant was arraigned before the trial court charged with the offence of unlawful possession of Government trophies contrary to section 86 (1), (2) (b) and (3) of the Wildlife Conservation Act [CAP. 283 R. E, 2022] on 03/03/2021, the applicant expressed his intention to appeal. By so doing, he filed the Notice of Intention to Appeal before this court through the Prisons Authority herein Morogoro.

He lamented further that, after few days, he was transferred to Kilosa District Prisons and later was transferred to Mbigiri Farm Prisons. Such



movements prevented and indeed made him unable to make the necessary follow-up to obtain copies of judgment and proceedings as his movements was limited to prisons vicinities.

He went on submitting that, the copies of judgment and proceedings of the trial court were transmitted to him through prisons authorities late in October, 2021. He afterward prepared grounds of appeal and submitted them through prisons authority where the case was registered as Criminal Appeal No. 5 of 2021 at this court but he was hammered with an objection raised by the State Attorney who contended that the appeal filed by the applicant was out of time prescribed by law, hence this application.

I have anxiously considered the application. The position of the law is settled that a party seeking an extension of time is duty bound to show sufficient cause for his delay and must account for each day of his delay. (See: **Benedict Mumelio vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 Court of Appeal of Tanzania (Unreported) and **Juluma General Supplies Limited vs. Stanbic Bank Limited**, Civil Application No. 48 of 2014 (unreported).

In this application, the relevant material provided by the applicant is a delay by the trial court to supply the copies of both judgment and trial court proceedings which are important documents in initiating the appeal process. Other reason advanced by the applicant is concerning with the two transfers from Kilosa District Prisons to Mbigiri Prisons and finally to Morogoro Prisons. Illuminated by these factors, I shall right away accept the explanations that the

applicant delayed to file his appeal within time because the Resident Magistrate's Court of Morogoro, at Morogoro delayed to supply him with the copies of judgment and trial court proceedings.

In **Mary Kimaro vs. Khalfan Mohamed [1995] TRL 202**, the Court made it clear that a delay in appealing caused by the applicant's delay in getting copies of documents to enable him or her to appeal, constitutes a good cause when it comes to extension of time. It is also evident that the applicant has been vigilant pursuing his rights. Accordingly, and on the basis of the foregoing, I hold that the applicant has spectacularly succeeded to convince this court that delays in lodging the Notice of Intention to Appeal and Petition of Appeal were caused by sounding reasons that fall in the realm of sufficient case.

In the result, I allow the applicant's application. Exercising my discretionary power, I thus extend the time within which the applicant may file Notice of Intention to Appeal before this Court to 15 days and Petition of Appeal to 45 days from the date of this ruling. **I so order.**

DATED at MOROGORO this 30th day of November, 2022.



A handwritten signature in blue ink, appearing to read "M. J. Chaba", is written over a circular stamp.

M. J. Chaba

Judge

30/11/2022

Court:

Delivered at my hand and Seal of the Court in Chamber's this 30th day of November, 2022 in the presence of Ms. Veronica Chacha, learned State Attorney and the Applicant who appeared in person, unrepresented.



M. J. Chaba

Judge

30/11/2022

Rights to the parties fully explained.



M. J. Chaba

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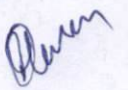
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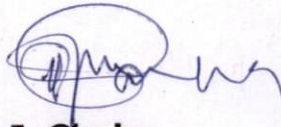
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