

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)
AT DAR ES SALAAM**

MISC. CRIMINAL APPLICATION NO. 14 OF 2022

*(Arising from the judgment of the District Court of Bagamoyo at Bagamoyo
in Criminal Case No. 296 of 2021)*

GODFREY JOSEPH APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

21st, & 22nd February, 2022

ISMAIL, J.

On 6th January, 2022, the applicant was convicted of the offence of rape. The District Court of Bagamoyo at Bagamoyo, in which he was arraigned and convicted, sentenced him to a custodial sentence of thirty years. He has instituted an application, moving the Court to grant an extension of time within which to file and serve a notice of appeal, which will pave the way for his intended appeal against his conviction and sentence.

The application is supported by the applicant's own counter-affidavit in which reasons for his inability to file the notice of appeal have been adduced. The applicant attributes the delay to his inability to access to the service of a legal practitioner who would help him prepare the notice of appeal. This was due to the fact that he was immediately conveyed to prison to commence his new life immediately after the sentence.

The application did not encounter any opposition from the respondent. Ms. Laura Kimario, learned State Attorney, informed the Court that the respondent was not opposed to the application. This, then, left the door open for Mr. Victor Mhana, learned counsel for the applicant, to address the Court. While adopting the contents of the affidavit sworn in support, Mr. Mhana argued that after the conviction, the applicant tried to communicate, to a police officer, of his intention to lodge an appeal but he did not get the assistance he needed. It was not until 30th January, 2022 that he communicated with his family members and lodged the instant application.

Mr. Mhana argued that the applicant was not negligent in pursuing this matter and that the delay of 15 days was not inordinate. While imploring the Court to be inspired by the Court of Appeal's decision in **TANESCO v. Mufungo Leonard Majura & 14 Others**, CAT-Civil Application No. 94 of

2016 (unreported), learned counsel argued that the applicant's conduct was diligent not apathetic. He prayed the application be granted.

The sole question for determination is whether the application is meritorious.

It is a settled position that extension of time is grantable where the applicant is able to show that his inability to take the desired action was due to sufficient cause. This position has been underscored in dozens of judicial pronouncements. In the case of ***Republic. v. Yona Kaponda and 9 others*** (1985) TLR 84 (CAT), the Court of Appeal of Tanzania held:

"In deciding whether or not to allow an application to appeal out of time, the court has to consider whether or not there are sufficient reasons" not only for the delay but also "sufficient reasons" for extending the time during which to entertain the appeal."

It also requires that such party must show diligence and not negligence, apathy or any form of procrastination that depicts indiligence. The rationale for this is as was guided in the subsequent decision of the upper Bench in ***Luswaki Village Council and Paresui Ole Shuaka v. Shibesh Abebe***, CAT-Civil Application No. 23 of 1997 (unreported), in which the following observation was made.

".... those who seek the aid of the law by instituting proceedings in court of law must file such proceedings within the period prescribed by law...Those who seek the protection of the law in the court of justice must demonstrate diligence."

Going through the affidavit, it comes out clearly that the reason for the applicant's inability to initiate the appeal process was not of his own doing. He lost control while under restraint, not knowing who the right person to contact and offer the required assistance was. Looking at the length of time between the pronouncement of the decision and the filing of the instant application, it is clear that the applicant was not wasteful in managing time. He was forthright and diligent throughout this entire process. I take the considered view that the applicant has sufficiently shown that good cause exists for the grant of the application for extension of time.

The decision to accede to the applicant's prayer is emboldened by the legal holdings which are to the effect that it is wrong to shut an applicant out of court, and deny him the right of appeal, unless it can fairly be said that his or her action was, in the circumstances, inexcusable (see ***Isadru v. Aroma & Others***, Civil Appeal No. 0033 of 2014 [2018] UGHCLD 3. In my considered view, circumstances of this case are excusable.

In the premises and in sum, it is my conviction that the application has met the requisite threshold and it succeeds. Accordingly, the same is granted and the applicant is given fourteen (14) days within which to file notice of appeal and the appeal.

It is so ordered.

DATED at **DAR ES SALAAM** this 22nd day of February, 2022.



A handwritten signature in blue ink, appearing to read "M.K. ISMAIL", is written over a horizontal line.

M.K. ISMAIL

JUDGE