

**IN HIGH THE COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 44 OF 2021**

*(Originating from the District Court of Nachingwea at Nachingwea in Criminal Case No.122 of 2019)*

**MOSHI ALLY @MNG'AGI..... APPLICANT**

***VERSUS***

**THE REPUBLIC.....RESPONDENT**

**RULING**

*Date of Last Order: 28/2/2022*

*Date of Ruling: 2/3/2022*

**LALTAIKA, J.**

This is an application for extension of time to file a petition of appeal against the judgment of the District Court of Nachingwea, at Nachingwea in Criminal Case No. 122 of 2019. The application is brought under section 361(2) of the Criminal Procedure Act, [Cap. 20 R.E. 2019] This application is accompanied with the applicant's own affidavit sworn on the 26<sup>th</sup> day of October, 2021. It is brought by way of Chamber Summons. In the Chamber Summons the applicant has raised two prayers: -

"1. That the Honourable court may be pleased to grant the applicant

an extension of time to file the petition of appeal to the High court out of the prescribed time from the conviction and sentence imposed by the District court of Nachingwea.

2. Any other order that the court deems fit to grant.”

In paragraph 3 of the affidavit, the applicant avers that he was convicted and sentenced to serve a jail term of fifteen years in prison from 11.3. 2020. Under paragraph 4 of the affidavit the applicant avers further that he is aggrieved with the decision of the trial court thus, he filed a notice of intention to appeal vide the services of the prison authorities.

The applicant contended in his affidavit that he received the certified copies of the proceedings and judgment of the trial court on 24.7.2020 At paragraph 6 and 7 the applicant avers that he was transferred from Nachingwea Prison to Lindi Prison where he started preparing the petition of appeal. Under paragraph 8 the applicant avers that he was also transferred from Lindi Prison to Lilungu Prison where he made follow up of his appeal and found that he was out of the prescribed time to lodge the appeal. Lastly, in paragraph 9 of the affidavit, the applicant avers that failure to file his appeal on time was caused by the circumstances beyond his control as he received the certified copies of the proceedings and judgment after the expiry of 45 days. He also contended that being

a layman and prisoner with limited access to legal services actuated to his delay.

It is was without any doubt that the application would not be objected by the respondent since, no counter affidavit had been filed to signify resistance up to the time of hearing.

During the hearing of the application, the applicant appeared in person and unrepresented whereas Ms. Faraja George, learned Senior State Attorney appeared on behalf of the respondent Republic. Supporting his application, the applicant prayed that his grounds deponed in his affidavit be adopted and form a part of his submission.

On the part of the respondent, Ms. George firstly appreciated the drafting of the affidavit which she described as informative and well crafted. The learned Senior State Counsel thereafter conceded with the applicant's application adding that had it been the intention of the respondent to object the application she would have filed a counter affidavit.

Having scrutinized the application and attentively followed submissions thereto,

it is now my time to ask whether myself whether the reasons advanced by the applicant are sufficient to move this court to grant the prayer.

At this juncture it is prudent to revisit what this court and courts bellow it consider to be sufficient or good cause. I aware that our laws

have not defined what constitute sufficient or good cause. However, the Court of Appeal of Tanzania has proffered in **Regional Manager, Tanroads Kagera vs. RUAHA Concrete Company Ltd.** Civil Application No. 90F (unreported) thus: -

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

Indeed, as per circumstances of the present case, the delay to certify the proceedings and judgment of the intended appeal as well as supplying the same to the applicant as narrated in his affidavit and submission, it is evident that the circumstances were beyond the control of the applicant and thus he cannot be blamed for the same.

In view of the above, I am convinced that the applicant has explained sufficient reasons which warrant this court to exercise its discretion to grant extension of time sought. Since the applicant had already lodged his notice of intention to appeal, I now proceed to extend time as prayed, to file his appeal out of time within forty-five (45) days effective from the date of this ruling.

It is so ordered.



**E.I. LALTAIKA**

*E.I. Laltaika*  
**JUDGE**

**02.03.2022**

This ruling is delivered under my hand and the seal of this Court on this 2<sup>nd</sup> day of March,2022 in the presence of Mr. Wilbroad Ndunguru, learned Senior State Attorney and the applicant who has appeared in person, unrepresented.



**E.I. LALTAIKA**

A handwritten signature in black ink, appearing to read "E.I. Laltaika", written in a cursive style.

**JUDGE**

**02.03.2022**

