

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
MISCELLANEOUS CRIMINAL APPLICATION NO. 94 OF 2021
(Originating from the District Court of Mbarali at Rujewa,
Criminal Case No. 71 of 2019)**

MASELE MABULA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

REASONS FOR THE DECISION

Dated: 28th February & 4th March, 2022

KARAYEMAHA, J

On 28/02/2022, after hearing submissions from both parties and casted a glance at the affidavit supporting the application, this court granted an application for extension of time within which the applicant to lodge a notice of appeal file an appeal out of time after being satisfied that there were sufficient grounds triggering this court to exercise its discretion. I reserved my reasons which I am now set to give.

This Court was moved under section 361 (2) of the Criminal Procedure Act (Cap. 20 R.E. 2019) (hereinafter the CPA) to grant orders for:

1. Extension of time within which to lodge a notice of appeal and the appeal out of time.



2. Any other orders the court may deem fit and just to grant.

The application is brought by way of a chamber summons supported by an affidavit affirmed by Masele Mabula giving reasons why he delayed to take action.

Briefly, the applicant was an accused person in Criminal Case No. 71 of 2019. He was charged in the District Court of Mbarali at Rujewa with two counts of rape contrary to section 130 (1) (2) (e) of the Penal Code Cap 16 R.E. 2002 and secondly, impregnating a school girl contrary to section 60A (3) of the Education Act Cap 353 as amended by Act No. 2/2016. The trial Court having heard the prosecution and defence witnesses was satisfied that the two offences were proved beyond reasonable doubt. Consequently, the accused person was convicted and finally sentenced to 30 years imprisonment in each count.

The applicant was aggrieved but could not lodge the notice of appeal in time. Therefore, he filed this application on 12/11/2021 seeking orders listed above. The respondent neither filed a counter affidavit nor contested the application.

When the application was called on for hearing, the applicant appeared in person and not represented while the respondent, the Republic was represented by Mr. Saraji Iboru, learned Principle State Attorney.



Submitting in support of the application, the applicant argued that he failed to lodge the notice of appeal and petition of appeal because no sooner was he imprisoned than he was transferred from Mbarali Prison to Ruanda prison and later to Songwe agricultural prison. He submitted further that during the whole period he was making follow up of the copies of proceedings and judgment since 2019 and got them in 2022.

As indicated above, the respondent did not contest the application. Mr. Saraji submitted two crucial factors that made the applicant fail to appeal within the prescribed time. One, being a prisoner he had no total freedom to prepare his appeal therefore he depended on the prison authority for assistance. Two, transfers from one prison to another impeded him to appeal within time.

Concisely, that was the submissions by parties. Before dealing with the substance of this application in light of the submissions from both sides, I find it pertinent to restate that although Court's power to extend time under section 361 (2) of the CPA is both broad and discretionary, it can only be exercised if good cause is shown. Even if it may not be possible to lay down an invariable definition of what a term good cause so as to guide the exercise of the Court's discretion in this regard, the Court must consider the merits or otherwise of the excuse tabled by the applicant for failing to meet the threshold of the limitation period prescribed for

taking a required action. Apart from sounding explanation for the delay, Court of Appeal has invariably held that good cause would also depend on whether the application for extension for extension of time has been brought promptly and whether there was diligence on the part of the applicant. See for instance, decisions in ***Attorney General v Oysterbay Villas Limited and another***, Civil Application No. 299/6 of 2016 in which the Court of Appeal followed its earlier decisions in ***Dar es Salaam City Council v Jayantilal P. Rajani***, Civil Application No. 27 of 1987 (unreported) and ***Tanga Cement Company Limited v Jumanne D Masangwa and Amos A. Mwalwanda***, Civil Application No. 6 of 2001 (unreported).

It is evident that the decision of the trial Court intended to be challenged via appeal process was handed down on 05/11/2019. In terms of section 361 (1) (a) of the CPA the appellant was legitimately expected to lodge a notice of appeal within 10 days from the date of the conviction and sentence and in terms of section 361 (1) (b) of the CPA, the intended petition of appeal was to be lodged within forty five days from the date of the delivery of the aforesaid judgment or sentence. But he delayed.

The uncontested reasons for the delay include delay in acquiring copies of proceedings and judgment which I think, the court is not to blame, transfers and lack of freedom to control appeal affairs. I concede to



these reasons because, the unsettled prisoner could not have time to prepare documents for appeal. I am pretty sure that he depended on the prison officers for help. This means the applicant is no way to blame. I, thus, find no laxity and negligence on the part of the applicant. In addition I do not feel any degree of prejudice on the part of the respondent if the application is granted.

Consequently, and on the basis of the foregoing, I hold that the applicant has spectacularly succeeded to convince this Court that delays in lodging the appeal were caused by sound reasons that fall in the realm of sufficient cause. In sum, I find that the applicant has passed the test set for grant of extension of time. Accordingly, the merited application is granted. Accordingly, I order the applicant to lodge a notice of appeal within 14 days and the intended appeal be filed within 30 days from 28/02/2022 when this court granted the application for extension of time.



It is so ordered.

Dated at **MBEYA** this **4th** day of **March, 2022**

A handwritten signature in blue ink, appearing to read "J. M. Karayemaha".

J. M. Karayemaha
JUDGE