

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF DODOMA  
AT DODOMA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 26 OF 2021**

**MARTIN NDAHANI DANIEL ..... APPLICANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**  
**(Arising from the judgment of District Court of Kongwa at Kongwa)**  
**(K.M Saguda, RM); Dated the 11<sup>th</sup> of May, 2020**

**In**

**Criminal Case No. 33 of 2019**

**RULING**

**15<sup>th</sup>&16<sup>th</sup>February,2022**

**MDEMU, J.**

This is an application for extension of time filed by the Applicant on 6<sup>th</sup> day of May 2021. It is under the provisions of section 361(2) of the Criminal Procedural Act, Cap. 20 R.E 2019. The Applicant prays for the following orders, that: -

- a) This Honourable Court be pleased to order extension of time for which the Applicant shall present his appeal against decision of Kongwa District Court dated 11/05/2020 out of time.*
- b) Any other relief(s) this Honourable Court may deem fit and just to grant.*

The application is supported by an affidavit sworn on 16<sup>th</sup> day of March 2021 by one Martin Ndahani Daniel, the Applicant. When the matter

came for hearing on 15<sup>th</sup> day of February 2022, the Applicant was represented by Mr. Mselingwa, learned advocate, whereas the Respondent Republic was represented by Ms. Lina Magoma, Senior State Attorney.

In support of the application, Mr. Mselingwa after adopting the affidavit of the Applicant to form part of his submissions submitted that; the Applicant delayed to appeal within time because he was sick following depression actuated by the act of being imprisoned. Having so submitted in respect of reasons for delay, he subsequently prayed this application be allowed.

In reply, the Respondent Republic had no objection to the prayer. However, Ms. Magoma argued that, the Applicant has not accounted for reasons for the delay for want of any document annexed in affidavit to prove that he was sick. In rejoinder, Mr. Mselingwa simply reiterated what he submitted in chief.

Having carefully gone through submissions of both parties and the Applicant's affidavit, the issue to be determined here is whether the Applicant has shown good and sufficient cause for the delay.

In essence, the law requires a person applying for extension of time to demonstrate good cause for delay as prescribed in the provision of

section 361(2) of the Criminal Procedure Act Cap. 20 R.E 2019 as hereunder: -

*"361(2). The High Court may for **good cause**, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed." (Emphasis mine)*

There are a number of authorities to the effect that an application for extension of time may be granted upon the Applicant having shown good cause as was stated, for instance, in the case of **Mumello vs. Bank of Tanzania [2006] E.A 227**, where it was held that: -

*"It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse and that extension may only be granted where it has been sufficiently established that the delay was due to sufficient cause."*

Again, in the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported), the Court of Appeal issued the following guidelines for the grant of extension of time: -

- 1. The Applicant must account for all the period of delay.*
- 2. The delay should not be inordinate.*



3. *The Applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intended to take.*
4. *If the court feels that there are sufficient reasons/ such as the existence of a point of law of sufficient importance such as the illegality of the decision ought to be challenged.*

Furthermore, in the case of **Maneno Muyombe and Masumbuko Musa vs. R, Criminal Appeal No. 435/2016**, the Court of Appeal sitting at Tabora, while interpreting section 361(2) of the Criminal Procedure Act, Cap. 20 R.E 2019 held that, although extension of time is a matter of discretion on the part of the High Court, but such discretion must be exercised judicially and flexibly with due regard to the relevant facts of a particular case.

Back to the application at hand; are there any good and sufficient cause for delay shown by the Applicant for this Court to extend time? In this application, the Applicant in his affidavit at paragraph 3,4, and 5 stated the following as factors for delay:

3. *That, the Applicant being aggrieved with the said decision intended to appeal unfortunately he became sick and admitted to Kongwa District Hospital very soon after he received a copy of judgement and*

*until he was discharged from Hospital on the time for appeal was already time barred hence failure to appeal within the required time. **A copy of the documents from hospital are hereby attached and marked BM-2 collectively and leave is hereby craved to make it read as part of this affidavit.***

*4. That, soon after being discharged from the Hospital he was again attacked by Tuberculosis disease hence was again put under medication from 20<sup>th</sup> July 2020 to 13<sup>th</sup> July 2021. **A copy of the said Patient medication card is hereby attached and marked BM-3 leave is hereby craved to make it part of his affidavit.***

*5. That, the Applicant's delay in filling an appeal was neither caused by negligence rather was due to his illness which made it impossible for the Applicant to concentrate on case.*

According to the records, the judgement of the District Court was delivered on 11<sup>th</sup> of May, 2020. In that regard, this appeal ought to be lodged latest by 24<sup>th</sup> day of June 2020 so as to meet the prescribed period of forty-five days as provided for under the provisions of section 361(1)(b) of the Criminal Procedure Act, Cap. 20 R.E 2019.

According to annexure BM 2, there are the followings dates which the Applicant attended at Kongwa District Hospital for treatment namely,

27/5/2020, 14/6/2020, 1/07/2020, 03/07/2020, 06/07/2020, 8/7/2020, 11/07/2020, 15/07/2020, and 18/07/2020.

I am aware that the Respondent Republic never filed counter affidavit, the reason why, in my opinion, did not resist this application. That being the position, the learned State Attorney may not contest the application on matters of facts. She can only do so where legal issues are involved, which remain lacking in the instant application.

Peculiar to this application, and guided by the principle that the court has discretion power to enlarge time, of course knowingly that such discretion has to be judiciously exercised, I allow the application as prayed for. The Applicant is hereby given forty-five (45) days within which to have the intended appeal lodged with the court.

It is so ordered.



**Gerson J. Mdemu**  
**JUDGE**  
**16/02/2022**

**DATED at DODOMA** this 16<sup>th</sup> day of February, 2022



**Gerson J. Mdemu**  
**JUDGE**  
**16/02/2022**