

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
MBEYA DISTRICT REGISTRY  
AT MBEYA  
MISCELLANEOUS CRIMINAL APPLICATION NO. 103 OF 2021  
(Originating from the District Court of Vwawa at Songwe,  
Criminal Case No. 87 of 2019)**

**REMMY RASHID MARANDU.....APPLICANT**

**VERSUS**

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

**R U L I N G**

*Dated: 7<sup>th</sup> & 11<sup>th</sup> March, 2022*

**KARAYEMAHA, J**

This Court is 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 the applicant giving reasons why he delayed to take action.

Essentially, the applicant was an accused person in Criminal Case No. 87 of 2019. He was charged in the District Court of Vwawa at Songwe with

two counts first, breaking into a house with intent to steal c/s 297 of the Penal Code Cap 16 R.E. 2002 and secondly, stealing c/s 257 and 265 of the Penal Code Cap 16 R.E. 2002. He was convicted on his own plea of guilty and sentence to serve 15 years imprisonment in the 1<sup>st</sup> count and 5 years imprisonment in the 2<sup>nd</sup> count.

The applicant was aggrieved but could not lodge the notice of appeal and petition of appeal within the prescribed time. Therefore, he filed this application on 17<sup>th</sup> December, 2021 seeking orders listed above. The respondent did not file a counter affidavit but 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. Davis Msanga, learned State Attorney.

Submitting in support of the application, the applicant argued that he failed to lodge the notice of intention to appeal and petition of appeal because no sooner was he imprisoned than he was transferred and escorted from Mbozi Prison (original prison) to Ruanda central prison and later to Isanga prison at Dodoma.

He submitted further that his first application was struck out for being incompetent on the reason that he failed to cite a section of law.

As indicated above, the respondent contested the application. Mr. Msanga submitted that the applicant failed to prove that he had already made a 1<sup>st</sup> attempt of applying for extension of time. Mr. Msanga seemed to argue that by averring that he was transferred from one prison to another, the applicant contradicted his averments that he had once filed an application which was declared incompetent and consequently struck out.

Concisely, that is the summary of 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 09/10/ 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.

In the instant application the circumstances leading to the delay are clearly stated in paragraphs 2, 3, 4 and 5 of the affidavit supporting the application. Essentially, the applicant is stating that he was unable to lodge the notice of appeal and appeal within the prescribed time because a copy of judgment was supplied to him after three months, after he was convicted and sentenced he was transferred from Mbozi Prison to Ruanda central prison and later to Isanga prison at Dodoma, he once applied for extension of time but the same was struck out for being incompetent and that he was unable to control his affairs because he depended on the prison authority.

It is a cherished principle of law that, in an application for extension of time, the applicant has to account for every day of the delay, see **Bariki Israel v. Republic**, Criminal Application No. 4 of 2011.

This Court has considered the issue of delay in lodging the notice of appeal and appeal and found that the applicant reasons for delay impressive and afford the applicant an avenue for enlargement of time. In the case of **Attorney General v. Tanzania Ports Authority and Another**, Civil Application No. 87 of 2016 the Court held that:

*"What amounts to good cause includes whether the application has been brought promptly absence of any invalid explanation for the delay and negligence on the part of the applicant."*

For those reasons, I find and hold that, the applicant was not negligent and has advanced valid explanation warranting this Court exercise its discretion to grant the enlargement of time sought. In the result, I grant the extension of time. The notice of intention to appeal should be lodged within 10 days and petition of appeal within 30 days from the date of this ruling.

It is so ordered.

Dated at **MBEYA** this **11<sup>th</sup>** day of **March, 2022**



A handwritten signature in blue ink, appearing to be 'J.M. Karayemaha'.

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**J. M. Karayemaha**  
**JUDGE**