

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
MISCELLANEOUS CRIMINAL APPLICATION NO. 101 OF 2021
(Originating from the District Court of Chunya at Chunya,
Criminal Case No. 68 of 2018)**

PETER LUMBILAAPPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

R U L I N G

Dated: 7th & 11th 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 petition of 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 sworn by the applicant giving reasons why he delayed to take action.

Briefly, the applicant was an accused person in Criminal Case No. 68 of 2018. He was charged in the District Court of Chunya at Chunya, with the offence of rape c/s 130 (1) (2) (e) of the Penal Code Cap 16 R.E. 2002. He was convicted and sentenced to life imprisonment.

The applicant was aggrieved but could not lodge the notice of intention to appeal and petition within the prescribed time. Therefore, he filed this application on 10th December, 2021 seeking orders listed above. The respondent didn't file a counter affidavit but contested the application in his reply submission.

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 and petition of appeal because the prison office was late to act and that when copies of proceedings and judgment were supplied to him he was already time barred.

As indicated above, the respondent contested the application. Mr. Msanga construed a failure to lodge a notice of appeal as insufficient reason because according to him lodging a notice of appeal requires no copy of judgment. On the other hand the learned state Attorney had it that

the applicant was satisfied with the ruling handed down by Hon. Dr. Mongella, J because he did not act promptly.

Briefly, that is the summary of parties' submissions. 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 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 31/ 8/, 2018. 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. But he delayed. He therefore, came to this Court armed with an application seeking for extension of time. This Court (Mambi, J.) extended time for 14 days on 29/10/2019. The applicant was legitimately expected, therefore, to lodge a notice of intention to appeal on 12/11/2019 but he filed it on 26/11/2019. Satisfied that he disobeyed the Court's order, this Court (Mongella, J.) dismissed his appeal for delaying extra 14 days from the original ones. His appeal was struck out on 22/06/2020 and was advised to apply for another extension of time to file his notice of intention to appeal and to lodge the appeal out of time.

Since then the applicant never took any action. It was not until 10/12/2021 when he emerged with the present application. The applicant states the circumstances leading to the delay under paragraphs 2, 3, 4, 5,

6, 7 and 8 of the affidavit supporting the application. Generally, the applicant is stating that he prepared a notice of appeal on 1/9/2018 through the prison authority and was received by the appropriate High Court registry. When he stood to support his appeal, it was discovered that his notice of intention to appeal was defective and his appeal was struck out. After his appeal was struck out, he applied for extension of time before this court (Mambi, J) and was granted 14 days. Nevertheless, he failed to appeal within those 14 days and his subsequent appeal out of 14 days before Mongela, J was struck out. He averred further that he received the copy of that ruling on 20/10/2021. He instantly applied for extension of time through the Ruanda prison authority within a year. What is substantial in his reasons is that after Mongella, J had pronounced the ruling on 22/06/2020, a copy of the same was not supplied to him in time to enable him lodge the notice of intention to appeal and the petition of appeal. Upon receiving it on 20/10/2021 he engaged the prison officers to assist him prepare the application which was lodged on 10/12/2021. There is a gap of 50 days. I, think, as a prisoner, he could not control appeal affairs which he entrusted the prison authority to assist. So he is not to blame for the laps of 50 days given the fact that he was under charity and wish of the prison officers.

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 petition of appeal and has found the applicant's reasons for delay impressive. The major reason advanced by the appellant is that which was caused by delay in getting the copy of ruling handed down by Mongella, J. That is a good and sufficient reason for extension of time, as was stated in the case of **Mary Kimaro v Khalfan Mohamed** [1995] TLR 202. It was made clear in that case that a delay in appealing caused by the applicant's delay in getting copies of documents to enable him or her to appeal, constitutes a good or sufficient cause when it comes to extension 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."

Guided by the above principle, I find and hold that, the applicant was never negligent and has validly been able to explain why he delayed to lodge a notice for intention to appeal and the petition of appeal 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 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 **11th** day of **March, 2022**

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

J. M. Karayemaha
JUDGE