

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**CRIMINAL APPLICATION NO. 1 OF 2022**

(C/F Criminal Appeal No. 6 of 2019)

**BETWEEN**

**MOHAMED JUMANNE.....APPLICANT**

**VERSUS**

**THE D.P.P (REPUBLIC) .....RESPONDENT**

**RULING**

05.05.2022 & 17.05.2022

**N.R. MWASEBA, J.**

This application has been brought under the provisions of section 361 (2) of the Criminal Procedure Act Cap 20 R.E 2019 where the applicant is seeking for extension of time to file their appeal out of time. The application is supported by an affidavit sworn by the applicant himself.

*Mwaseba*

At the hearing of the application the applicant appeared in person while the respondent was represented by **Ms. Eunice Makala**, learned State Attorney who did not object the application.

Reasons for delay are established in the applicant's affidavit where it is stated that the delay is a result of the applicant's advocate's failure to file his petition of appeal and since he is in prison custody, he was unable to timely notice that his advocate had not filed his petition of appeal, and thus the time to file his appeal had lapsed. He added that he was having two cases at the lower court and his advocate filed an appeal against one case which is Criminal case No. 18 of 2019 leaving out Criminal Case No. 63 of 2019 due to lack of communication especially in payments.

In his submission which was done orally he asks the court to adopt his affidavit as part of his submission and prayed to be allowed to file his appeal out of the prescribed time.

On her side Ms. Makala reiterated the reasons adduced on the applicant's affidavit as submitted herein above and added that since the applicant is still in prison custody and was having no other means, it was not his fault that he failed to file an appeal within the prescribed time.

I have gone through the applicant's affidavit and an oral submission of both sides. It is a trite law that, powers to grant extension of time are

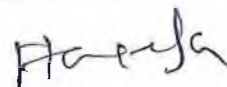
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vested to the court, such powers are discretionary but needs to be exercised judicially which means that before granting prayers for extension of time the court must be satisfied that sufficient cause for the delay has been well established by the applicant.

I am well aware of the position of law that negligence or an error made by an advocate through negligence or lack of diligence is not sufficient cause for extension of time. See the case **of Yusuph Same & Another Vs. Hadija Yusuph**, Civil Appeal No. 01 of 2002 (Unreported). However, the Court of Appeal of Tanzania in the Case of **Charles Chama & others Vs. The Regional Manager TRA & Others**, Civil Appeal No. 224 of 2018 (Unreported) observed that:

*"Every case must be decided on its own set of facts".*

In the present case I have considered the fact that the applicant is in prison and thus was unable to make frequent follow ups to see if his petition of appeal was filed or not, and the fact that he entrusted his advocate to file his petition of appeal on his behalf but unfortunately turned him down, this court finds the applicant is not to be blamed for the alleged delay.



I have also considered the fact that the respondent herein has not objected the application, in the circumstances, I find no justification not to allow this application and grant the prayer sought by the applicant.

Accordingly, this application is granted. Keeping in mind that the applicant is in custody, leave is granted for the applicant to file his appeal within 30 days from the date of this ruling.

It is so ordered.

**DATED at ARUSHA** this 17<sup>th</sup> day of May, 2022.



A handwritten signature in blue ink, appearing to read "N.R. Mwaseba", is written above the printed name.

**N.R. MWASEBA**

**JUDGE**

**17.05.2022**