

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SUMBAWANGA
AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 12 OF 2022

(Originated from Economic case No. 12 of 2017 from Katavi Resident Magistrate)

RAFAEL S/O CHAGULAAPPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of last order: 18/05/2022

Date of Ruling: 18/05/2022

NDUNGURU, J.

The applicant in this application one Rafael s/o Chagula has brought this application under Section 361 (2) of the Criminal Procedure Act, Cap 20 Revised Edition 2002. In his application the applicant pray for the following orders:

- (i) That the court be pleased to file notice and appeal out of time.
- (ii) Any other order (s) the court may deem fit and just to grant.

The chamber application is duly supported by the affidavits duly sworn by the applicant and Prison officer respectively.

The Respondent/The Republic opted not to file the counter affidavit. When the application was called up for hearing the applicant appeared in person (unrepresented) while the Respondent/The Republic enjoyed the service of Mr. Peres the learned State Attorney.

When the applicant was given an opportunity to submit in support of the application, he had nothing substantial. He prayed the court to adopt his affidavit and that of the Prison Officer and allow his application notice of intention to appeal against conviction and sentence and further prepared the grounds of appeal on time and left it to the admission office for filing to the court. Thus he had no control over them having left them at the admission office of the prison.

Mr. Peres, the learned State Attorney for the respondent did not object the application. In his submission he stated that the grounds set in the affidavit of the applicant and that of the Prison Officer are genuine thus urged the applicant's application be granted.

Having considered the submissions of the parties and examined the grounds stated in the applicant's and Prison Officer's affidavits, the striking

question in this application is whether there is any justification for this court to exercise its discretion under Section 361 (2) of the Criminal Procedure Act, Cap 20 (Revised Edition 2002). The said provision bestows this court with the discretion as it says:

"The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has lapsed."

It is trite that extension of time under the above provision is a matter of discretion on part of this court, but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case.

From the applicant submission, it is clearly noted that the applicant intended to fully utilize the ten days' time of filing the notice of his intention to appeal, but he being a prisoner depended on the prison authority to the needful for him thus he had no control over his affairs. I take this as a crucial point into account.

Apart from the above, I have also considered the particular circumstances of the applicant. Being inmate serving time in prison, the applicant had no control over his affairs; he was at the mercy of the Officer in charge of the prison or the prison authority. In this regard, it is unfair to expect too much from him. See the case of: **Buchumi Oscar V.**

Republic, Criminal Appeal No. 295 "B" of 2011 Court of Appeal of Tanzania, **William Ndingu @ Ngoso V. Republic**, Criminal Application No. 3 of 2014 Court of Appeal of Tanzania and **Maneno Muyombe & Another V. The Republic**, Criminal Appeal No. 435 of 216 Court of Appeal of Tanzania (all unreported). Further, I have taken into account the affidavit of Prison Officer on reasons for delay to file appeal on time due to the several prisons' transfer upon the appellant which caused the delay of filing notice of intention to appeal on time.

Basing on the foregone analysis I am of the conclusion that the applicant's pursuit for extension of time has exhibited good cause. In the consequence I grant the application. The applicant to lodge his notice of appeal within Twenty one (21) days from the date of delivery of this ruling. and thereafter within forty five (45) days he shall lodge his petition of appeal.

It is so ordered.




D.B. NDUNGURU

JUDGE

18.05.2022