

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 10 OF 2022

ALBERT ANOLD @KALULU APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Application for extension of time from the decision of the District Court
of Kinondoni at Kinondoni in Criminal Case No. 329 of 2018)**

RULING

7th and 7th February, 2022

KISANYA, J.:

The applicant, Albert Anold @Kalulu has filed an application seeking extension of time within which to appeal. The decision subject to this application was delivered by the District Court of Kinondoni at Kinondoni in Criminal Case No. 329 of 2018. The application is made under section 361 (2) of the Criminal Procedure Act [Cap. 20, R.E. 2019] (henceforth “the CPA”). It is supported by an affidavit sworn by the applicant.

In terms of the supporting affidavit, on the 28th day of August, 2020, the applicant was convicted in absentia, for an offence of rape. He was then sentenced to life imprisonment. On the 4th day of February, 2021, the applicant appeared before the trial court whereby, the judgment and

sentence were read over to him. Aggrieved, the applicant lodged a notice of intention to appeal on 12th February, 2021.

Upon receiving the copies of the judgment and proceedings on 6th August, 2021, he filed the petition of appeal on 14th September, 2021. The applicant deposed that, his appeal was rejected for being lodged out of time. That position forced him to prefer the present application.

When this matter was called on for hearing today, the applicant appeared in person, whereas Ms. Monica Ndakidemi, learned State Attorney appeared for the respondent.

At the outset, Ms Monica informed the Court that the Republic was not objecting the application. Thus, she urged the Court to grant the same. On his part, the applicant prayed the Court to grant him leave to appeal out of time.

The issue that I am called upon to determine is whether this Court can exercise its powers under 361(2) of the CPA to extend the time within which to appeal. Pursuant to section 361(1) of the CPA, the time within which to give the notice of intention to appeal and lodge the petition of appeal is ten (10) and forty five (45) days, respectively, counted from the date of

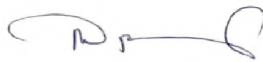
impugned decision. However, the law is clear that the time requisite to obtain the copies of judgment and proceedings are excluded in computing the time limitation. If an aggrieved person is unable to give the notice of intention to appeal and lodge the petition of appeal within the time set out by the law, this Court is enjoined to extend time if there is good cause. The law does not define what amount to good cause. It is therefore, determined basing on the circumstances of each case.

In the instant case, the facts deposed in the supporting affidavit show that the applicant was prompt and diligent to take the necessary action to challenge the decision subject to this application. He gave the notice of intention to appeal within ten days from the date when the judgment and sentence were read over to him. Given the fact that the copies of the judgment and proceedings were supplied to him on 6th August, 2021, I am of the considered view that he was not in a position of writing and lodging his petition of appeal. It is also in evidence that the applicant lodged the petition of appeal which was rejected by this Court, forty (40) days after receiving the copies of judgment and proceedings. In the circumstances, I am satisfied the applicant has demonstrated good cause to warrant this Court to grant him leave to appeal out of time.

That said and done, the application is found meritorious and granted. The applicant is hereby ordered to give the notice of intention to appeal and file the petition of appeal within ten (10) and forty five (45) days, respectively, from the date of this order.

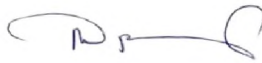
It is so ordered.

DATED at DAR ES SALAAM this 7th February, 2022.



E. S. Kisanya
JUDGE

Court: Ruling delivered this 7th day of February, 2022 in the presence of the applicant and Ms. Monica Ndakidemi, learned State Attorney for the Respondent. B/C Salma present.



S.E. Kisanya
JUDGE
7/02/2022