

**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. 267 OF 2021

RAMADHAN JUMA @KICHE APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Application for extension of time from the decision of the District Court
of Bagamoyo at Bagamoyo in Criminal Case No. 262 of 2020)**

RULING

29th and 31st March, 2022

KISANYA, J.:

This application seeks extension of time within which to lodge a notice of intention to appeal against the decision of the District Court of Bagamoyo in Criminal Case No. 262 of 2020. The application is preferred under section 361 (2) of the Criminal Procedure Act [Cap. 20, R.E. 2019] (hereinafter referred to as "the CPA"). It is supported by an affidavit affirmed by the applicant on 2nd December, 2021.

It is gleaned from the supporting affidavit that, the decision subject to this application was delivered by the District Court of Bagamoyo on the 20th day of April, 2021. In terms of the said decision, the applicant was convicted of the offence of unnatural offence contrary to section 154(1)(a) of the Penal Code [Cap. 16, R.E. 2019] and was sentenced to serve thirty (30) years imprisonment. It is

deposed further that, subsequent to conviction, the applicant was transferred to Mbilingi Prison before filing his notice of intention to appeal. He went on to state that he was forced to seek leave to lodge the notice of intention to appeal out of time because the Mbilingi Prison authorities failed to lodge the same within the prescribed time. He contended further that the delay was caused by the reason beyond his control.

Despite being served with the application, the respondent did not file a counter-affidavit. Thus, in view of the settled position, the facts deposed by the applicant were not contested.

Before me, the applicant appeared in person, unrepresented. On the other hand, the respondent enjoyed the legal services of Mr. Clemence Kato learned State Attorney.

Upon being invited to submit in support of the application, the applicant reiterated his position that the delay was attributed by his transfer from one prison to another. Therefore, he implored me to allow the application.

In his rebuttal submission, Mr. Kato submitted that the applicant had not advanced a good cause to warrant extension of time. On the issue of transfer of the applicant from one prison to another, Mr. Kato submitted that such fact was not proved by evidence and that the applicant ought to have engaged prisoner

officers. He went on to submit that the applicant had not accounted for each day of delay. Referring to the case of **Aziz Mohammed vs R**, Criminal Application No. 84 of 2019, he contended that the respondent will be prejudiced because it is the interest of justice that litigation should come to an end. He therefore, prayed that the application be dismissed for want of merit.

In the light of the above, the issue for consideration is whether the applicant has advanced good cause for the delay as required by section 361(2) of the CPA. In considering whether to extend time, the Court must be satisfied that the applicant has advanced good cause which prevented him from giving the notice of appeal within the time prescribed by the law. The law does not define what amount to good cause. It is therefore, determined basing on the circumstances of each case.

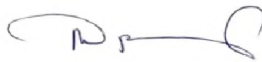
In the instant case, the reason for the delay is to the effect that the applicant was transferred to another prison immediately after being convicted and before giving the notice of intention to appeal. It was also stated under oath that the applicant gave the notice of intention to the relevant authority of Mbilingi Prison where he was transferred to serve the sentence. The applicant went on to blame the Mbilingi Prison for delaying to lodge his notice of intention to appeal in the District Court. As indicated earlier, the facts which attributed to the delay were not

challenged by the respondent. For that reason, I will not consider the submission made by the learned State Attorney to challenge the facts deposed on oath.

Having considered that the applicant has been under custody of the Prison authorities, I am of the view that he has demonstrated how the delay was beyond his control. Thus, the applicant has advanced good cause to warrant extension of time.

For the reasons shown above, this application is granted. It is ordered that the notice of intention to appeal be given within ten (10) days from the date of hereof. It is ordered further that the petition of appeal be filed within forty five (45) from the date of this ruling.

DATED at DAR ES SALAAM this 31st day March, 2022.



S.E. Kisanya
JUDGE
31/03/2022