

**IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA
MISC. CRIMINAL APPLICATION NO 28 OF 2022**

FADHILI JUMA LIWAWA..... APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

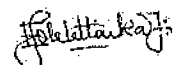
Date of Last Order: 25/4/2022

Date of Ruling: 9/5/2022

LALTAIKA, J.

The Applicant herein **FADHILI JUMA LIWAWA** is seeking extension of time to file a petition of appeal out of time. The applicant is moving this court under section 361(2) of the Criminal Procedure Act, [Cap 20, R.E. 2019]. This application is supported by an affidavit affirmed by the applicant on 2nd March 2022. The respondent Republic, on her part, has not resisted the application by way of a counter affidavit.

At the hearing, whereas the applicant appeared in person, unrepresented the respondent was represented by Mr. Wilbroad Ndunguru, learned Senior State Attorney. In his submission, the applicant appeared rather brief. He stated that he was convicted and sentenced on 25th day of February 2021 and was not supplied with certified copies of the proceedings

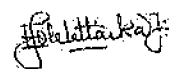


and judgement. The applicant stated further that he applied for the same but he was told that the same were not ready for collection yet. A court official promised him that the certified copies would be delivered to him in prison.

It is the applicant's submission that while in prison, he went to the admission officer and told him about his request. The admission officer in turn made a follow up at the trial court and managed to obtain and brought the same to the applicant. The admissions officer told him that he had lodged the appeal at the High Court Registry on his behalf.

The applicant stated further that while in prison he met a fellow prisoner who is educated in law. When the fellow prisoner saw his certified copies of the judgement and proceedings, he opined that the applicant's appeal was already time barred. It is the applicant's submission that on the 8/11/2021 he appeared in court and prayed to withdraw his appeal with an intention of refileing it. The applicant emphasized that he refiled the same but his application was objected by the respondent. To that end, he was advised to withdraw it and refile the same with the necessary amends. It is the applicant's submission further that he has refiled the application once again and prayed the court to consider it favorably.

In reply, the learned Senior State Attorney did not resist the application. Focusing on the 7th, 8th and 9th grounds of the applicant's affidavit, Mr. Ndunguru stated that he supported the application. Mr.



Ndunguru stated further that such grounds were to the effect that the transfer of the applicant from Ruangwa to Lilungu Prison made it difficult for him to follow up on his application for extension of time. It is Mr. Ndunguru's submission that such transfer interfered with the applicant's process and he remained under the mercies of prison authorities. He concluded his submission by stating that, for the interest of justice, it was his prayer that the application be allowed so the applicant could lodge his petition of appeal.

In a rejoinder, the applicant reiterated what he had submitted in chief. He insisted that his application be granted.

Having gone through the submissions of both parties, I am inclined to decide on the merits or otherwise of the application. It is trite law that an application for extension of time is entirely in the discretion of the court to grant or not. Moreover, extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient or good cause.

In the present application, the reasons for the delay are featured under paragraphs 6,7 and 8 of the affirmed affidavit of the applicant and vide his oral submission. The main reasons as can be grasped from the aforementioned paragraphs plus the oral submission are that **One**, failure of the trial court to supply certified copies of the judgement and proceedings on time, **Two**, the transfer of the applicant from Ruangwa Prison to Lulindi Prison made it difficult for the applicant to know the progress of his application and **three**, being a prisoner who depended on legal assistance



from the prison's admission office, he couldn't influence or speed up the process.

In view of the above, it is clear that the delay was caused by factors beyond the ability of the applicant to control and they can not be blamed on him.

The next issue I am called upon to resolve is whether or not the reasons advanced by the applicant amount to good cause. Our law does not define what amounts to good cause. However, in the case of **Reginal Manager, TANROADS Kagera v. Ruaha Concrete Company Ltd** Civil Application No90F 2007 (Unreported) it was held that:

"Sufficient reasons cannot be laid down by any hard and fast rule. This must be determined in reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time."

As to the matter at hand, I can safely say that, the applicant has advanced good cause for his delay to lodge his petition of appeal out of time. The chain of events explained in the applicant's affidavit shows that in spite of inability to follow up on his case due to the circumstances beyond his control as a prisoner, he has not given up. I am convinced that the applicant has not only advanced good cause but also exhibited great diligence in pursuing his appeal. He has not shown any apathy, negligence or sloppiness in the prosecution he intends to take as emphasized in the case of **Lyamuya**



Construction Co. Ltd vs. Board of Registered trustees of the Young Women Christian Association of Tanzania Civil Application No 2 of 2020 [2011] TZCA4.

For the foregoing reasons, I find and hold that the applicant has advanced sufficient reasons for the delay to warrant this court to exercise its discretion to grant the enlargement sought. Therefore, the applicant is hereby given forty-five (45) days to lodge his petition of appeal effective from the date of this ruling.

It is so ordered.



E.I. LALTAIKA

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JUDGE

9.5.2022

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