

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

**IN THE SUB-REGISTRY OF MANYARA**

**AT BABATI**

**MISC. CRIMINAL APPLICATION NO. 2 OF 2022**

*(Arising from Criminal Case No. 81 of 2022 Babati District Court)*

**JUMA HAMISI GIREDA.....APPLICANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

*Date of last order: 23/2/2023*

*Date of Ruling: 24/2/2023*

**RULING**

**BARTHY, J.**

This application has been preferred by the above-named applicant under Section 361 (2) of the Criminal Procedure Act [CAP 20 R.E 2019] (the CPA), seeking for the following reliefs;

- 1. That this honourable court be pleased to extend time for filing petition of appeal out of time.*
- 2. That this honourable court be pleased to make any other order(s) and or relief as it deems fit and just to grant.*

The application is supported with the affidavit of the applicant himself. The respondent lodged a counter affidavit to contest the application.



When the application was called on for hearing, the applicant appeared in person while the respondent was represented by Mr. Petro Ngasa, the learned state attorney. The application was disposed of orally.

The applicant in his arguments in support of his application he did not have much, but he prayed to the court to adopt his affidavit to form part of his submission.

On the other hand, Mr. Ngasa on his reply he submitted that the respondent does not contest the application.

Having no rival submissions of the parties on this application, yet this court has the duty to determine as to whether the applicant had advanced sufficient reasons for the court to exercise its discretion to extend time to file the appeal out of time.

Before determining the merits or otherwise of the application at hand, a brief background of this case is as follows;

The applicant was arraigned before Babati District Court (the trial court) for one count of unnatural offence contrary to Section 154(1) (a) and (2) of the Penal Code [CAP 16 R.E 2019]. It was alleged by the prosecution side that,

A handwritten signature in blue ink, appearing to read 'P. Ngasa', with a horizontal line drawn through it.

the applicant had carnal knowledge with a 6 months old baby against the order of nature. The offence which the applicant pleaded not guilty.

At the conclusion of the case before the trial court, the applicant was found guilty, he was convicted as charged and sentenced to serve life imprisonment. Aggrieved with the conviction and sentence meted against him, the appellant lodged notice of intention to appeal and upon being supplied with the judgment and proceedings, he lodged Criminal Appeal No. 4 of 2022.

When the said appeal was called on for hearing, the respondent pointed out that, the appeal was time barred as the proceedings were supplied to the applicant on 15/9/2022 and the appeal was lodged on 9/11/2022, beyond 45 days the time as prescribed by Section 361 (1) (b) of the CPA.

The appeal was therefore struck out for being time barred. The applicant therefore lodged the instant application.

As shown above the application has been preferred under Section 361 (2) of the CPA. The said provision provides;



*The High Court may, **for good cause**, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed. [Emphasis added].*

From the quoted provision above, for the court to exercise its discretion for extension of time, the applicant must show good cause. Guided by the law, but also being mindful of the decision of the Court of Appeal in the case of **Hamisi Mahona v Republic**, Criminal Appeal No. 141 of 2017 (unreported) where it referred to the gist of section 361(2) of the CPA and stated that;

*"The High Court may, for good cause, admit an appeal. That means, for the court to determine whether it should grant extension of time to file appeal or not, the sole determinant factor is whether or not the applicant has established good cause explaining the delay."*

In another case of **Hamis Ismail @ Zulu v R**, Criminal Appeal No. 205 of 2014 (unreported) the Court held that;

*"Under the above section the underlying factors for consideration in an application for extension of time is good cause for the delay. **What the High Court had to consider in determining the application was whether the affidavit filed by the appellant to***

***support his application gave good cause for the delay.***

From above decision the duty of the court is to consider the affidavit in support of the application to see whether the applicant has given good cause.

In this matter, looking on the affidavit in support of the application, the applicant states that, his earlier appeal was lodged in court within time, but he was surprised to see the said appeal was struck out for being out of time.

He admitted to have been supplied with the record on 15/9/2022; he filed his appeal on 18/10/2022 and it was approved by the court on 19/10/2022.

The applicant claimed further that he was just in prison and wondered how his appeal was out of time.

It is apparent that from the affidavit in support of the application that, the applicant could not explain the reason of delay apart from saying that he is just in prison.

With respect to the appellant contention, he should have attached the proof to show that the appeal was indeed lodged on 19/10/2022 and not otherwise.



However, for the interest of justice, the court gives the benefit of doubt to the applicant. Being mindful that, the appellant was serving his term, he may have truly forwarded his documents of appeal to the prison authority timely, but there was a delay to file them in court within time.

In the upshot, I find it proper to grant the application. The applicant should lodge his appeal within 21 days from the date of the ruling.

It is so ordered.

**DATED** at **Babati** this 24<sup>th</sup> day of February 2023.



**G. N. BARTHY,**  
**JUDGE**  
**24/2/2023**

Delivered in the presence of the appellant in person and Mr. Peter Utafu the state attorney appealing for the respondent.