

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM SUB DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC. CRIMINAL APPLICATION NO. 119 OF 2022**

*(Originating from Ruling of the Resident Magistrate’s Court of Kivukoni at Kivukoni in  
Misc. Criminal Application No. 5 of 2021 dated 01/12/2021 before Hon. F. S Kiswaga,  
SRM)*

**MLATIE RICHIE ASSEY.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

*Date of last Order: 05/12/2022*

*Date of Ruling: 10/02/2023*

**E.E. KAKOLAKI, J.**

This is uncontested application by the applicant herein for extension of time within which to file a notice of intention to appeal against the ruling of the Resident Magistrate’s Court of Dar es Salaam at Kisutu in Misc. Criminal Application No. 5 of 2021 dated 01/12/2021, granting the respondent’s application for applicant and his fellow not part on this application to execute bond with sureties for good behavior for a period of one year. The same is preferred under the provisions of sections 361 (1)(a), (b), (2) and 392A (1)

and (2) of the Criminal Procedure Act [Cap. 20 R.E 2019] and supported by the affidavit duly sworn by Elisa Abel Msuya, applicant's advocate.

Briefly the applicant having been discontented with the ruling of the trial court dated 01/12/2021 in the above cited application, timely issued a notice of appeal and filed the appeal in this Court before the same was withdrawn by his advocate on 22/08/2022, on the reason of defective notice as the same was titled in the Resident Magistrates Court of Dar es salaam instead of the High Court of Tanzania. The said advocate applied for supply of the withdrawal order which was availed to him on 29/08/2022 before this application was prepared and filed in Court on 31/08/2022. It is from that background the applicant is praying this Court to extend him time to file the notice and appeal out of time as stated above.

When the matter was called on for hearing the applicant appeared represented by Mr. Elisa Abel Msuya, learned advocate from M/s **TRUSTMARK ATTORNEYS**, whereas the respondent enjoyed the services of Mr. Clement Masua, learned State Attorney who informed the Court that the respondent was not contesting the application.

The law under section 361(1)(a) of the Criminal Procedure Act, [Cap. 20 R.E 2022] empowers this Court to grant this application upon good cause shown as there is no fast and hard rule as what amounts to good cause. I so say as good cause includes relevant materials or any sufficient reason that prevented the applicant from performing the action within the prescribed time limitation. See the cases of **Regional Manager, Tanroads Kagera Vs. Ruaha concrete Company Ltd**, Civil Application No. 96 of 2007, **Osward Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (both CAT-unreported) and **Jumane Hussein Bilingi Vs. Republic** (Criminal Application No. 20 of 2014 [2015]TZCA 342 (21 July 2015); [www.tanzlii.org.tz](http://www.tanzlii.org.tz)). In **Jumane Hussein Bilingi** (supra) the Court of Appeal had this to say:

*“...what amounts to good cause is upon the discretion of the Court and it differs from case to case. But basically **various judicial pronouncements defined good cause to mean reasonable cause which prevented the applicant from pursuing his action within the prescribed time.**”*  
(Emphasis added).

In this case the reason advanced by the applicant in paragraphs 7, 8, 9 and 10 of the affidavit is technical delay as at all that time he was busy in Court

corridors diligently pursuing the appeal. That had it not been for the defect of the notice of appeal the applicant's appeal would not have been out of time and that, the defect was not resulted from applicant's negligence therefore excusable. It is from those reasons Mr. Msuya implored this Court to grant the application given the fact that the respondent is not contesting its grant.

I have taken into consideration the grounds advanced by the applicant in support of this application and perused the supporting affidavit. It is the law that, in applications of this nature the applicant has to account for the period delayed even if it is a single day. See the cases of **Bushiri Hassan Vs. Latina Lukio, Mashayo**, Civil Application No. 3 of 2007, **Mohamed Athuman Vs. R**, Criminal Application No.13 of 2015 and **Tanzania Coffee Board Vs. Rombo Millers Ltd**, Civil Application No 13 of 2015 (all CAT-unreported). In **Latina Lukio, Mashayo** (supra) the Court of Appeal stated thus:

*"Delay, even a single day, has to be accounted for, otherwise there would be no meaning of having rules prescribing periods within which certain steps have to be taken..."*

It is undisputedly learnt from the applicant's affidavit that the notice of appeal and appeal challenging the lower court decision was timely filed before the same was withdrawn by the applicant's advocate on 22/08/2022 on the ground of defectiveness of the notice. It is also in evidence that, soon after withdrawal of the appeal the applicant applied for the withdrawal order to prove to this Court that he was busy in Court pursuing his appeal which was issued to him on 29/08/2022 before he prepared this application on 30/08/2022 and have it filed on 31/08/2022. With that account I am satisfied that the applicant has accounted for the delayed days as his delay was also a technical one on the ground that the notice filed had defect not resulting from his negligence. Good cause has therefore been shown by the applicant and I so find.

In the premises this application has merit and the same is hereby granted as prayed. Time is extended to the applicant for 21 days from the date of this ruling for him to file both the notice of appeal and the petition of appeal.

It is so ordered.

Dated at Dar es Salaam this 10<sup>th</sup> day of February, 2023.



E. E. KAKOLAKI

**JUDGE**

10/02/2023.

The Ruling has been delivered at Dar es Salaam today 10<sup>th</sup> day of February, 2023 in the presence of Mr. Paul Kimweri, State Attorney for the Respondent and Ms. Monica Msuya, Court clerk and in the absence of the applicant.

Right of Appeal explained.



E. E. KAKOLAKI

**JUDGE**

10/02/2023.

