

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**  
**MISCELLANEOUS CRIMINAL APPLICATION NO. 34 OF 2022**

*(Originated from Ukerewe District Court at Nansio, Criminal Case No. 38 of 2020)*

**NYENZE KULOLA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

*6<sup>th</sup> March 2023*

**ITEMBA, J.**

In the District Court of Ukerewe, the applicant **Nyenze Kulola** was charged and convicted with the offence of stealing by agent contrary to section 273 of the Penal Code, Chapter 16 of the Revised Edition 2019. He was sentenced to serve four (4) years of imprisonment and to pay a fine of TZS 15,000,000/=.

The applicant upon being dissatisfied with the decision thereof, lodged the instant application seeking for an order of extension of time to lodge a notice of intention to appeal against the impugned decision as well, for any other order (s) this court may deem fit just to grant. The application is supported by two affidavits; one from the applicant himself and the other from one **S'SGT Philemon Sarota**, the in charge of admission office, at Ukerewe District Prison.

When the matter was scheduled for hearing, the appellant appeared in person while the respondent was represented by Ms. Sofia Mgasa, learned state attorney.

Upon given opportunity to augment in chief in respect of this application, the appellant generally and briefly asked the court to grant him the application because being in prison, he did not know how to go about the filing of appeal and there was no person to assist him at the moment. He also stated that the copies of proceedings were late to reach him as he was convicted on 19/2/2021 but received the copies of proceedings on 10/2/2022 which was more than a year later. He finalised his submission by stating that although he has finished serving his imprisonment sentence, there is still an order for compensation which he is supposed to pay and he is disputing those payments.

In reply, the state attorney supported the application. She stated that the applicant has successfully established the reasonable ground for delay as he has genuinely explained that he lacked support of a person with legal knowledge, in filing the appeal in a timely manner. Ms. Mgasa also acknowledged the affidavit filed by S'SGT Philemon Sarota explaining that their prison did not have a competent person to assist the applicant until when he (the deponent) arrived.

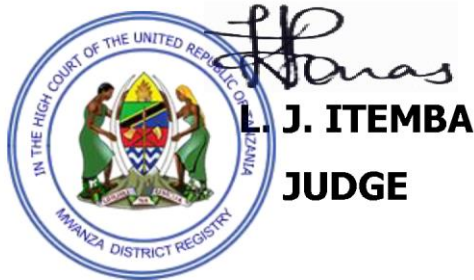
Section 361 (2) of the CPA provides that, the court may invoke the powers to extend time, if only there is a reasonable ground to do so. It is also a trite principle of the law that the court may for any reasonable or sufficient cause advanced by the applicant grant leave for extension of period of limitation. See the case of **Benedict Mumello vs. Bank of Tanzania** (2006) 1 EA 227 (CAT) and the case of **Lyamuya Construction Company Ltd v Registered Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). In both cases it was decided that an application for extension of time is entirely in the discretion of the court to grant or refuse it and the same may be granted only where sufficient reasons for the delay has been established.

I have gone through the applicant's affidavit and that of S'SGT Philemon Sarota, it is stated that the moment the applicant was admitted in prison he showed his intention to appeal and that there was no prison officer at that time, who was conversant with legal matters a situation which rendered his delay. That the delay was beyond the applicant's control, as he was behind bars.

Basing on the above stated reasons which I have expounded, along with the fact that the respondent does not contest the instant application, I

am convinced beyond doubt that the applicant has disclosed a sufficient and a reasonable ground for delay and therefore the application is granted. The applicant is ordered to file his Notice of Appeal within thirty (30) days from the date of delivery of this ruling.

It is ordered accordingly.



Ruling delivered in the presence of the appellant in person, Ms. Sofia Mgasa state attorney for respondent and Ms. Gladys Mnjari, RMA.

A handwritten signature in blue ink, appearing to be 'L. J. Itemba', is shown on a light background.

**L. J. ITEMBA**  
**JUDGE**  
**6.3.2023**