

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO.54 OF 2022

*(Arising from the High Court of Tanzania at Mtwara in Criminal Appeal
No.81 of 2018 and originating from the District Court of Lindi in Criminal
Case No.27 of 2018)*

ABDUL ABDALLAH MDAFAR.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

3/3/2023 & 10/3/2023

LALTAIKA, J.

The applicant, **ABDUL ABDALLAH MDAFAR**, is seeking extension of time within which to lodge the Notice of Appeal to the Court of Appeal of Tanzania out of time. The applicant is moving this court under section 11(1) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019] and any enabling provisions of the law. This application is supported by an affidavit affirmed by the applicant on 3/10/2022. It is noteworthy that this application has not been resisted by a counter affidavit of the respondent.



When this matter was called on for hearing on 3/3/2023, the applicant appeared in person, unrepresented while the respondent was represented by Mr. Enosh Kigoryo, learned State Attorney. The applicant submitted that he had written down reasons for his delayed application thus, he prayed that the same be admitted and form part of his submission.

In response, Mr. Kigoryo submitted that on the last day, the applicant was given time to attach a copy of the Judgement of this court in his application. The learned State Attorney contended that now the applicant has complied with the order. To this end, Mr. Kigoryo submitted that they have no objection.

However, the learned State Attorney averred that while this court is extending time, it should take cognizance of rule 68 (1) of the Court of Appeal Rules which provides for the prescribe time to lodge Notice of Appeal to the Court of Appeal. Mr. Kigoryo stressed that the same requires that the application be lodged within 30 days. The Court may extend time but not beyond 30 days. The learned State Attorney contended that lodging a notice is 30 days, and lodging a petition is 60 days after being granted with the records of the trial court by the registrar of the High Court.

In a brief rejoinder, the appellant submitted that he was jailed 2018. He went on and submitted that in 2019 when he was in Kitai Prison in Songea a tree fell on him. He contended further that since then, he is disabled. The appellant submitted that the time he spent on treatment until he was able to walk using one support crutch contributed to the delay. The




appellant submitted that he is still attending clinic in Muhimbili. However, he has missed about three appointments. He contended that the Prison authorities particularly the doctor said he can no longer send him there.

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. Furthermore, extension of time may be granted where it has been sufficiently established that the delay was due to sufficient or good cause.

In the application at hand, the reasons for the delay are featured under paragraph 3, 4 and 5 of the affirmed affidavit of applicant and vide his oral submission. The main reasons as can be grasped from the aforementioned paragraphs plus the oral submission are that **One**, inadequate advice from the advocate that he cannot appeal against his own plea of guilty. **Two**, the transfer of the applicant from Lilungu Prison (Mtwara) to Kitai Prison in Songea made it difficult for the applicant to lodge the Notice of Appeal to Court of Appeal within time. **Three**, when the applicant was in Kitai Prison in Songea a tree fell on him and resulted into being a disabled. In addition, the applicant spent a lot of time for treatment at Muhimbili National Hospital until he was able to walk using one support crutch. More so, the applicant is still attending a clinic in Muhimbili.

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

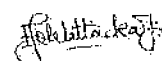


The next issue I am called upon to resolve is whether or not the reasons advanced by the applicant amount to good cause. Our law does not define what amounts to good cause. However, in a very recent case of **TCCIA Investment Company Limited vs. DR. Gideon H. Kaunda**, (Civil Appeal 310 of 2019) [2022] TZCA 599 of the Court of Appeal at page 13 quoted with approval the definition of phrase 'sufficient cause' from the Erstwhile Court of Appeal for East Africa in the case of **Shanti v. Hindoche and Another** [1973] E.A. 207 and thus stated that:-

"...the more persuasive reason...that he can show is that the delay has not been caused or contributed by dilatory conduct on his part. But that is not the only reason."

As to the matter at hand, I can safely say that, the applicant has advanced good cause for his delay to lodge his Notice of Appeal to the Court of Appeal out of time. Indeed, the chain of events explained in the applicant's affidavit and also his submission shows that in spite of inability to follow up on his case due to circumstances beyond his control as a prisoner, he has not given up. I am fortified 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 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 thirty (30) days to lodge his Notice of Appeal to the Court of Appeal of Tanzania effective from the date of this ruling.

It is so ordered.



E.I. LALTAIKA

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JUDGE

10.3.2023

Court:

This ruling is delivered under my hand and the seal of this court on this 10th day of March 2023 in the presence of Mr. Enosh Kigoryo, learned State Attorney and the applicant who has appeared in person, unrepresented.



E.I. LALTAIKA

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JUDGE

10.3.2023

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