

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISC. CRIMINAL APPLICATION NO.56 OF 2022**

*(Originating from the District Court of Lindi in Criminal Case No.47 of 2021)*

**YAHAYA RAJABU MABOGA.....APPLICANT**

***VERSUS***

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

**RULING**

*8/3/2023*

**LALTAIKA, J.**

The applicant, **YAHAYA RAJABU MABOGA**, is moving this court under section 361(2) of the Criminal Procedure Act [Cap. 20 R.E. 2002] now the REVISED EDITION 2022 to extend time within which to file a Petition of Appeal to this court. This application is supported by an affidavit affirmed by the applicant on 28/9/2022 expounding circumstances and reasons for the delay. It is noteworthy that this application has not been resisted by a counter affidavit of the respondent.

At the hearing, the applicant appeared in person, unrepresented while Mr. Enosh Kigoryo, learned State Attorney, appeared for the respondent

Republic. At the outset the applicant submitted by praying that his application be adopted and form part of his submission.

In response, Mr. Kigoryo had no objection to the applicant's application. He submitted further that this court should take cognizance of the position of the law on the prescribed time which is usually 45 days. Furthermore, the learned State Attorney contended that the fact that the applicant is a prisoner, he has no control over his documents. He stressed that the applicant is at the mercy of the prisoner authorities. To this end, Mr. Kigoryo submitted that for the sake of justice, the application for extension of time to file a Petition of Appeal out of time be granted.

Having dispassionately gone through the application by the applicant and submission of both parties, I am inclined to decide on the merit or otherwise of the application. In the present application, the main reasons for the delay as extracted under paragraphs 6, 7 and 8 of the affirmed affidavit as well as the respondent's oral submission are that **One**, inability of the Prison Authority to liaise and file the already prepared Petition of Appeal at the registry of this court on time. **Two**, the transfer of the applicant to Lilungu Central Prison in Mtwara. **Three**, the curtailment of the applicant's right to liberty which made him unable to follow up his case. **Four**, limited legal assistance in prison.

In view of the above reasons, it is apparent that the delay was caused by factors beyond the ability of the applicant to control and cannot be blamed on him. The subsequent issue I am called upon to resolve is whether the reasons advanced by the applicant amount to good cause. Our law does not define what amount to good/sufficient cause. However, in the case of

**Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007 (unreported) it was held:-

*"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."*

The same was stated by the Court of Appeal in the case of **Tanga Cement Co. Ltd. vs Jummanne D. Masangwa and Another**, TAG Civil Application No.6 of 2001 (unreported).

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. In deed the chain of events explained in the applicant's affidavit and also in oral submission 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 displayed any apathy, negligence or sloppiness in the prosecution he intends to take as was 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 Petition of Appeal effective from the date of this ruling.

It is so ordered.



**E.I. LALTAIKA**

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

**JUDGE  
08.03.2023**

**Court:**

This ruling is delivered under my hand and the seal of this court on this 8<sup>th</sup> 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**

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

**JUDGE  
08.03.2023**