

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO.43 OF 2022

*(Originating from the District Court of Tandahimba in Criminal Case No.36
of 2021)*

SALUM SEIF.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

3/3/2023

LALTAIKA, J.

The applicant, **SALUM SEIF**, is seeking extension of time within which to file a Petition of Appeal out of time. The applicant is moving this court under section 361(2) of the Criminal Procedure Act [Cap. 20 R.E. 2019] now the REVISED EDITION 2022. This application is supported by an affidavit affirmed by the applicant on 1/8/2022. It is noteworthy that this application has not been resisted by a counter affidavit of the respondent.

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

respondent. The applicant submitted that he knew that he was serving a 5-year imprisonment term. However, he was acquitted by this court, it was Criminal Case No 33 of 2021. The applicant contended that when he went to prison, he was told that there were two more cases. He stressed that he was surprised to see that the sentences were running differently. The prison authorities told him that they have their own way of looking at things. The applicant submitted further that he believed that this court is his solution. He argued that this court to have a closer look at the matter since other on the same subject matter namely theft of a motorcycle. Furthermore, the applicant contended that there were different motorcycles which each motorcycle attracted a different sentence.

In response, Mr. Kigoryo submitted that he propose that the application for extension of time before this court be entertained first, that is when the court can go back to the issues applicant has raised. The learned State Attorney stressed that they need to ensure that the same does not remain in the registry of the court unattended. To this end, Mr. Kigoryo submitted after considering the reasons advanced, he did not object application.

In a short rejoinder, the applicant submitted that it has been long since he lodged his application for extension of time. He went further and argued that it was received in this court on 16/8/2022. The applicant contended that the reason he gave include lack of legal assistance since he is a layman. In addition, he submitted that delay in receipt of judgement and proceedings and difficulties in prison life where his freedom is curtailed contributed to the delay.

Having 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 instant application the main reasons for the delay are featured under paragraphs 6, 7 and 8 of the affirmed affidavit as well as the applicant's oral submission are that **One**, the curtailment of the applicant's right to liberty which made him unable to follow up his case. **Two**, limited legal assistance in the Prison Authorities. **Three**, delay in receipt of a copy of judgement and proceedings.

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 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 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."

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

Handwritten signature of E.I. Laltaika in blue ink.

JUDGE

3.3.2023

Court: This ruling is delivered under my hand and the seal of this court on this 3rd 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

Handwritten signature of E.I. Laltaika in blue ink.

JUDGE

3.3.2023