

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

MOROGORO

MISC. CRIMINAL APPLICATION NO. 12 OF 2023

(Originating from Economic Case no. 03 of 2021 from Ulanga District Court at Mahenge)

KULWA AMBILIKILE..... APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of last Order: 06/03/2023

Date of Ruling: 06/03/2023

MALATA, J

This ruling is in respect of the application for extension of time within which to file notice of appeal and petition of appeal. The application is by way of chamber summons made under section 361(2) of the Criminal Procedure Act, Cap 16, R.E 2022 supported by an affidavit deponed by Kulwa Ambilikile, the applicant.

The applicant was charged and convicted for unlawful possession of Government Trophies contrary to section 86 (1) and (2)(b) of the Wildlife

Conservation Act no.2 of the Economic Organised Crime Control Act Cap 20, R.E 2019 and sentenced to serve twenty years in jail.

The applicant did not prefer the appeal within time thence the present application for extension of time. the reasons advanced in the application is that, he was transferred from Mahenge Prison to Ruanda Prison in Mbeya, and when he was availed with the copy of judgement and proceedings the time for appeal has already lapsed.

The respondent was served with a copy of chamber summons but they raised no objection to the prayer.

On the hearing date both parties were all in attendance, the applicant appeared in person unrepresented, while the respondent appeared through Mr. Emmanuel Kahigi, the learned State Attorney.

The applicant had nothing to argue he just asked the court to grant the sought orders.

Having heard the application, the issue for determination is whether the applicant has shown good or sufficient cause for delay.

It is a cardinal principle that an application for extension of time is entirely in the discretion of court but whether to grant or refuse must be exercised judiciously. However, extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause.

The requirement of adducing good cause is gathered from section 361(2) of the Criminal Procedure Act, Cap 20 R.E. 2019 (the CPA) that reads;

"S. 361 (2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed."

The provision was construed by the Court of Appeal in the case of **Hamis Ismail @ Zulu Vs Republic**, Criminal Appeal No. 205 of 2014 (unreported), where the Court held;

*"Under the above section, the underlying factors for consideration in an application for extension of time is **good cause for the delay**. What the High Court had to consider in determining the application was whether the affidavit filed by the appellant to support his application **gave good cause for the delay**."*

The reason advanced by the applicant is that, the judgement was delivered on 28/03/2022 and the appellant was not availed with the copy of judgement and proceedings, later the appellant was transferred from Mahenge Prison to Ruanda Central Prison in Mbeya for studies. On 07/10/2022 the court supplied the applicant with the copies of judgement and proceedings , however he find already caught by time bar, he thus filed this application for extension of time.

A prisoner, like the applicant, his movement are restricted and he can't make follow ups on his matter. In the case of **Kabisa Sabiro and Two others versus Republic**, Criminal Appeal No. 191 of 2010 CAT (Unreported), it was held that;

"The appellants being in prison, it is to be expected that every action they take has to be through those under whose authority they are."

The Court of Appeal further held in case of **Shija Marko vs. Republic**, Criminal Appeal No. 246 of 2018 CAT (Unreported) that;

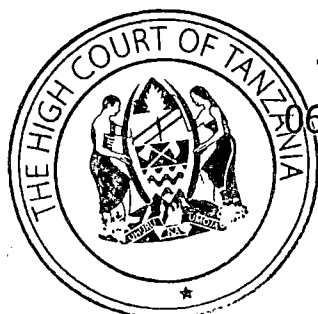
"Transfer of a prisoner from one prison to another has been considered by this court to be a reason for constituting good cause for extension of time."

In the matter at hand, the applicant has submitted on how he was transferred from one prison to another. Under the guidance of the above principles of law, I find it correctly to conclude that the applicant has demonstrated sufficient cause for delay.

In the event, I allow the application on condition that, the applicant is given a period of twenty-one days from the date of this ruling, within which to file notice of appeal and petition of appeal.

It is so ordered.

DATED at MOROGORO this 06th March, 2023.



G. P. MALATA

JUDGE

06/03/2023