

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRIC REGISTRY OF MUSOMA

AT MUSOMA

MISC. CRIMINAL APPLICATION NO. 52 OF 2022

(Originating from Criminal Case No. 16 of 2021 in the District Court of Musoma at Musoma)

BETWEEN

DAUDI S/O NYAMWERA@ SAMSON..... APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

15 & 22 Feb, 2023

M. L. KOMBA, J.

This is an application for extension of time to lodge petition of appeal out of time to this Court against decision of District Court of Musoma at Musoma Criminal Case No. 16 of 2021 which is made by way of chamber summons under section 361 (2) of Criminal Procedure Act, [CAP 20 R. E. 2022] (the CPA). The application is supported by affidavit of **DAUDI NYAMWERA@ SAMSON**, the applicant.

When the matter was scheduled for hearing, applicant was remotely connected from Musoma Prison, stand solo unrepresented, while Respondent, the Republic was represented by Mr. Isihaka Ibrahim (SA).

In support of the application, the applicant did not have much to say. He prayed this court to adopting his affidavit and prayed for extension of time so that he can appeal out of time. The only reason is that his appeal was rejected by the system as it was filed online, information which was received while he was out of time.

In reply Mr. Isihaka submitted that after reading affidavit of the applicant and its attachment, respondent is not protesting the applicant application.

I have given due consideration to both partys' short submission for this application. As a matter of principle, it is entirely in the discretion of the court whether to grant or refuse an application for extension of time as it is in section 361 (2) of the CPA. The said provision bestows the High Court with discretion in the following terms:

'The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.'

It is trite that extension of time under the above provision is a matter of discretion on the part of the High Court but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case. In emphasize, the case of **Kassana Shabani & Another vs. Republic**, Criminal Appeal No. 476 of 2007 (unreported) is of relevance where the Court of Appeal had this to say;

*'Since there appears to be a recurring or perennial problem, we would like to take this opportunity to make it clear that once an applicant under section 361 of the Act has **satisfactorily** accounted for the delay in giving notice of appeal or filing a petition of appeal, extension of time ought to be granted as a matter of right'*

The key word from the excerpt is satisfactorily. The applicant filed affidavit which was adopted during submission. In looking for satisfaction in application and reasons adduced, what I gathered is that the appeal was rejected by the system.

Based on that ground, the appellant's pursuit for extension had exhibited good cause bearing in mind that he is in prison as was observed in the case of **Maneno Muyombe & Another vs. Republic**, Criminal Appeal No. 435 of 2016 (unreported).

This application is allowed. The applicant is granted leave to lodge an appeal to the High Court against the decision of District Court of Musoma at Musoma Criminal Case No. 16 of 2021 within thirty days (30) from the date of delivery of this ruling.

GIVEN under my **HAND** and seal of the court.




M. L. KOMBA

Judge

22 March, 2023