

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MBEYA DISTRICT REGISTRY**

**AT MBEYA**

**MISC. CRIMINAL APPLICATION NO. 2 OF 2023**

*(Originating from the Criminal Case No. 33 of 2021 of the Resident Magistrate's Court of Mbeya at Mbeya)*

Between

**AHADI BROWN MWAIGWISYA ..... APPLICANT**

**VERSUS**

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

**RULING**

*20<sup>th</sup> March, 2023*

**NGUNYALE, J.**

By way of chamber summons made under section 361(2) of the Criminal Procedure Act [Cap 20 R: E 2022] "the CPA" the applicant is applying for extension of time in Criminal Case No. 33 of 2021 of the Resident Magistrate's Court of Mbeya for giving notice of appeal and filing petition of appeal to this court. The application is supported by an affidavit deposed the applicant. It is noteworthy that the respondent elected to file no counter affidavit which essentially implies that the averments in the supporting affidavit are uncontested.



When the application was called on for hearing the applicant appeared in person unrepresented whereas the respondent Republic was represented by Stephen Rusibamayira, State Attorney. The application proceeded orally.

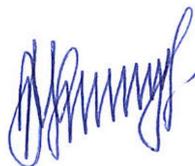
When the applicant was given chance to submit, he prayed the application to be granted as he delayed because he was not supplied with judgment and proceedings in time.

On part of the respondent, had no objection to the application because transfer from one prison to another was a source for the delay.

I have considered the submissions by the parties, after examining the application record I am of a settled mind that the only issue calling for my determination is, whether the applicant has managed to show sufficient cause warranting the extension of time he has sought. Relevant at hand is section 361(2) of the CPA that;

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

From the above, it is the law that for the court to exercise its discretion to extend time the applicant must advance good reasons. What constitute good reasons has not been defined by the law, it all depends on circumstance of the case. see the case of **Renatus Muhanje vs Republic**, Criminal Appeal No. 417 of 2016 (Unreported).



In the affidavit it has been averred by the applicant that after conviction he prepared notice of intention to appeal and left it to the officer in charge of the Ruanda prison for transmission to court. He has also demonstrated that on 5/9/2022 he was transferred from Ruanda Prison to Songwe Prison. For notice of intention to appeal being left in hands of the prison officer in the case of **Kabisa Sabiro and Two Others vs Republic**, Criminal Appeal No. 191 of 2010 (unreported) the Court was faced with a similar scenario, 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. This implies that he applicant depended on the assistance of prison officers to take some steps in instituting the appeal and the negligence or inaction of the prison officers cannot be resolved to the detriment of the applicant.

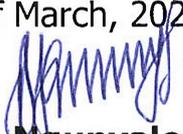
The other reason advanced by the applicant in the affidavit is transfer from Ruanda Prison to Songwe prison. In the number of cases the Court of Appeal has held that transfer of a prisoner from one prison to another has been considered by the Court to be a reason constituting good cause for extension of time. In **Mwita Mataluma Ibaso v. Republic**, Criminal Appeal No. 06 of 2013 (Unreported) the court stated that:



*'... in the present case the appellant was imprisoned at Songea Prison where he prepared and submitted his notice of intention to appeal to the Prison Authority for onward transmission to the court but before he could process its appeal to its completion, he was transferred to Ukonga Prison in Dar es Salaam. By analogy, we are accordingly inclined to agree with the learned State Attorney that the reasons for delay that were advanced by the appellant before the High Court constituted good cause.*

From the above given reasons, I agree with the State Attorney that the applicant has advanced good caused. The application is granted. The applicant through the prison authorities, should give the notice of his intention to appeal within ten (10) days from the date of the delivery of this ruling and within forty-five (45) days from the date he receives the proceedings and judgment.

DATED at MBEYA this 20<sup>th</sup> day of March, 2023

  
**D.P. Ngunyale**  
**Judge**

