

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA**

MISC. CRIMINAL APPLICATION NO. 66 OF 2022

(Originating from the Criminal Case No. 193 of 2019 of the District Court of Kyela)

Between

JACKSON MALAMBA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of last order: 6th March, 2023

Date of ruling: 7th March, 2023

NGUNYALE, J.

By way of chamber summons made under section 361(1) of the Criminal Procedure Act [Cap 20 R: E 2019 now R: E 2022] "the CPA", the applicant apply for extension of time in Criminal Case No. 93 of 2019 of the District Court of Kyela for giving notice of appeal and filing petition of appeal to this court. The application is supported by an affidavit deposed by 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 Rodgard Eliaman, State Attorney. The application proceeded orally.

When the applicant was given chance to submit, he stated that after conviction at Kyela he filed notice but was transferred to Ruanda Prison before completing the appeal process. Later on, he was transferred to Songwe prison where he prayed to be supplied with proceedings and it was until August 2022 when he was supplied with proceedings. When he wanted to file the appeal, he could not trace notice of appeal hence the present application.

The respondent on her part submitted that what is contained in the supporting affidavit is in contradiction with what have been submitted. The learned state attorney opined the applicant if he wishes to amend the affidavit.

Having considered the submissions by the parties and after examining the application records 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. The relevant provision 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 affidavit the main reason advanced by the applicant is that after conviction he was being transferred from one prison to another before he was supplied with the proceedings. Further to the above he avers that after he prepared and signed the notice of appeal left it to prison authority of Kyela as he was transferred to Ruanda prison. To his dismay after being supplied with proceedings he could not locate notice of appeal. During submission the State Attorneys stated that the applicant's submission was not based on allegation contained in the affidavit. I have considered the issue but I find it unmerited, through the affidavit all what was submitted by the applicant is contained in the affidavit. Had the respondent intended to controvert the application ought to have filed counter affidavit.

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. As hinted earlier the averment expounded in paragraphs 2 and 3 of the affidavit is not contested through counter affidavit as such it is taken that all what is stated in the affidavit is admitted by the respondent. All what the applicant say is attributed by inaction of the prison authority of Kyela not to file his



notice of appeal. In the case of **Kabisa Sabiro and Two Others vs Republic**, Criminal Appeal No. 191 of 2010 (unreported) in which the Court was faced with a similar scenario, it was stated that the appellants being in prison it is to be expected that every action they take has to be through prison authority.

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. See the case of **Renatus Muhanje vs Republic**, Criminal Appeal No. 417 of 2016 and **Mwita Mataluma Ibaso v. Republic**, Criminal Appeal No. 06 of 2013 (both unreported). In Mwita Mataluma's case the court stated that:

'We fully subscribe ourselves to the above position. Like in the above case, 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. The High Court was therefore not justified to refuse the applicant's application for extension of time.'

In this application the applicant's failure to file notice of intention to appeal as deponed is due to inaction on part of the prison authority at Kyela on his matter. Considering that the applicant is in prison, not a free agent



thus could not have been expected to do anything more than what he did. The appellant depended on the assistance of prison officers and the negligence or inaction of the prison officers cannot be resolved to the detriment of the applicant. On this, I am supported by section 363 of the CPA.

From the above given reasons, I am satisfied that the reasons for the delay as put forward by the applicant in support of his application constitute sufficient reasons and the application is allowed. 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. Furthermore, through the prison officers if the applicant is not in possession of proceedings and judgment, should request for a copy of the proceedings and the judgment sought to be impugned. Upon receipt of the proceedings and judgment, thereafter should lodge the appeal within forty-five (45) days from the date he receives the documents.

DATED at MBEYA this 7th day of March, 2023



D.P. Ngunyale
Judge