

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO.4 OF 2023

*(Originating from the District Court of Lindi in Criminal Case No.17 of 2022,
M. A. Batulaine, SRM)*

ISMAIL SELEMANI CHAKANI.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

5/4/2023

LALTAIKA, J.

The applicant, **ISMAIL SELEMANI CHAKANI**, is moving this court under section 361(2) of the Criminal Procedure Act [Cap. 20 R.E. 2002] now the REVISED EDITION 2022 to extend time within which to file a Petition of Appeal to this court. This application is supported by an affidavit affirmed by the applicant on 21/12/2022 expounding circumstances and reasons for the delay. It is noteworthy that this application has not been resisted by a counter affidavit of the respondent.

At the hearing of this matter, the applicant appeared in person, unrepresented while Mr. Edson Laurence Mwapili, learned State Attorney,

appeared for the respondent. At the outset the applicant submitted that he was convicted for the offence grave sexual abuse contrary to section 138C(1)(a) and (2)(b) of the Penal Code. The applicant went on and submitted that he was sentenced to serve twenty (20) years imprisonment term and also to pay a fine of TZS 200,000/= to the victim. The applicant contended that he filed his Notice of Intention to Appeal on time. However, he was transferred from Lindi Prison to Lilungu Prison in Mtwara on 02/03/2023. The applicant further argued that his application be adopted and form part of his submission.

In response, Mr. Mwapili had no objection to the applicant's application. The learned State Attorney submitted further that the delay by the applicant to lodge a Petition of Appeal was beyond his control. He maintained that the fact that the applicant is a prisoner, he has no control over his documents. Mr. Mwapili insisted that the applicant is at the mercy of the prisoner authorities. To this end, Mr. Mwapili submitted that for the interest of justice, the application for extension of time to file a Petition of Time out of time be granted.

Having dispassionately 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 present application, the main reasons for the delay are extracted under paragraphs 4, and 5 of the affirmed affidavit as well as the respondent's oral submission are that **One**, the transfer of the applicant to Lilungu Central Prison in Mtwara. **Two**, delay in receipt of a copy of judgement and proceedings from the trial court . **Three**, the curtailment of the applicant's right to liberty which made him

unable to follow up his case. **Four**, limited legal assistance in the Prison Authorities.

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 subsequent 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."

The same was stated by the Court of Appeal in the case of **Tanga Cement Co. Ltd. vs Jummanne D. Masangwa and Another**, TAG Civil Application No.6 of 2001 (unreported).

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 fact, 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 forty five (45) days to lodge his Petition of Appeal effective from the date of this ruling.

It is so ordered.



Court:

E.I. LALTAIKA

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

JUDGE

5.4.2023

This ruling is delivered under my hand and the seal of this court on this 5th day of April 2023 in the presence of Mr. Edson Laurence Mwapili, 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

5.4.2023