

**IN THE HIGH COURT OF TANZANIA  
(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISC. CRIMINAL APPLICATION NO.12 OF 2023**

*(Originating from Liwale District Court in Economic Case No.4 of 2021)*

**SEIF RASHID BWABWALA.....APPLICANT**

**VERSUS**

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

**RULING**

*10/5/2023*

**LALTAIKA, J.**

The applicant, **SEIF RASHID BWABWALA**, is seeking extension of time within which to file a Petition of Appeal out of time. The applicant is moving this court under section 361(2) of the Criminal Procedure Act [Cap. 20 R.E. 2002] now the **REVISED EDITION** 2022. This application is supported by an affidavit affirmed by the applicant on 7/3/2023. It is noteworthy that this application has not been resisted by a counter affidavit of the respondent.

During the hearing, the applicant appeared in person, unrepresented while Mr. Melchior Hurubano, learned State Attorney assisted by Ms. Atuganile Nsajigwa, learned State Attorney, appeared for the respondent.

The applicant submitted that he is aggrieved with the decision of the District Court of Liwale in Economic Case No.4 of 2021. He stressed that

the he was convicted and sentenced to serve twenty (20) years imprisonment term for each. However, the sentences were ordered to run concurrently. The applicant contended that he filed his notice of appeal on time. He also averred that he immediately appealed to this court. However, his appeal was out of time because of the distance from Liwale to Mtwara. The applicant contended further that a copy of the judgement was supplied to him late. Furthermore, the applicant submitted that he was transferred from Liwale Prison to Lindi Regional Prison. He insisted that the transfer caused inconvenience in locating his appeal related documents. To this end, the applicant prayed this court to accept his reasons for delay because are beyond his control as a prisoner.

In response, Mr. Hurubano at the outset did not object the application. The learned State Attorney argued this court to grant the application for the sake of justice.

Having 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 instant application the main reasons for the delay are featured under paragraphs 5, 6, 7 and 8 of the affirmed affidavit as well as the applicant's oral submission are that **One**, the curtailment of the applicant's right to liberty which made him unable to follow up his case. **Two**, delay in receipt of a copy of judgement and proceedings. **Three**, transfer from Liwale Prison to Lindi Regional Prison and also from Lindi Regional Prison to Lilungu Prison in Mtwara region.

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 next 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."*

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. Indeed 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. Despite the fact the applicant submitted to this court that he filed the Notice of Intention to Appeal on time which is not availed to this court. For the sake of justice though this court was not moved to do so, it is imperative to grant him both an extension of time to file the Notice of Intention to Appeal and Petition of Appeal, both out of time. Therefore, the applicant is hereby given ten (10) days to lodge his Notice of Intention to Appeal and forty five (45) days to lodge his Petition of Appeal effective from the date of this ruling.

It is so ordered.



**E.I. LALTAIKA**

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

**JUDGE**

**10.5.2023**

**Court:** This ruling is delivered under my hand and the seal of this court on this 10<sup>th</sup> day of May, 2023 in the presence of Mr. Melchior Hurubano, learned State Attorney assisted by Ms. Atuganile Nsajigwa, learned State Attorney and the applicant who has appeared in person, unrepresented.



**E.I. LALTAIKA**

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

**JUDGE**

**10.5.2023**