

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO.21 OF 2023

*(Originating from the District Court of Kilwa at Masoko in Criminal Case
No.25 of 2021)*

UWESU YAHAYA NAJUMU.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

12/7/2023

LALTAIKA, J.

The applicant, **UWESU YAHAYA NAJUMU**, is seeking an extension of time within which to file a Petition of Appeal, which is currently out of time. The applicant is invoking section 361(2) of the **Criminal Procedure Act [Cap. 20 R.E. 2002]** in support of this application. An affidavit affirmed by the applicant on 29/05/2023 accompanies this application. It is worth noting that the respondent has not filed a counter affidavit to resist this application.

During the hearing, the applicant appeared in person, without representation, while **Mr. Melchior Hurubano**, learned State Attorney, appeared on behalf of the respondent.

The applicant asserted that he filed the **Notice of Intention to Appeal** on time. Initially, the applicant requested the court to consider his affirmed affidavit as part of their submission. The applicant argued that the delay in filing the appeal to this court is attributable to two reasons. First, the trial court failed to provide him with the copy of the proceedings and judgment on time. He emphasized that he received the aforementioned documents on the same day they were delivered.

Second, the applicant stated that he was transferred to Lilungu Central Prison in Mtwara claiming that such a transfer made efforts to follow up on his appeal cumbersome. He claimed that upon arrival in Lilungu, he handed over to the Prison officer his documents for appeal and it was realized they were out of time. Finally, the applicant prayed for the court to grant the application.

In response, Mr. Hurubano submitted that, after considering the reasons presented by the applicant, he did not object to the application. The learned counsel urged the court to grant the application in the interest of justice.

Having reviewed the applicant's application and the submissions from both parties, I am inclined to determine the merit of the application. The main reasons for the delay, as outlined in **paragraphs 5, 6, 7, and 8 of the affirmed affidavit**, as well as the applicant's oral submission, are the delay in receiving a copy of the judgment and proceedings, and the transfer from Kilwa Prison to Lilungu Central Prison in Mtwara Region.

Based on the aforementioned reasons, it is evident that the delay was caused by factors beyond the applicant's control and cannot be attributed to him.

The next issue to resolve is whether the reasons provided by the applicant constitute good cause. Our law does not specifically define what constitutes good or 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 present material to the court that will persuade it to exercise its judicial discretion in granting an extension of time."

Considering the matter at hand, I can confidently state that the applicant has presented good cause for the delay in filing the Petition of Appeal out of time. The sequence of events explained in the applicant's affidavit, as well as his oral submission, demonstrates his persistence and diligence in pursuing the appeal despite his limitations as a prisoner.

The applicant has not displayed apathy, negligence, or carelessness in their intention to proceed with the appeal, as 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.

Based on the foregoing reasons, I find and conclude that the applicant has provided sufficient reasons for the delay, warranting this court to exercise its discretion in granting the requested extension. Therefore, **THE APPLICANT IS HEREBY GRANTED FORTY-FIVE (45) DAYS** from the date of this ruling to file his Petition of Appeal.

It is so ordered.




E.I. LALTAIKA
JUDGE
12.7.2023

This ruling is delivered under my hand and the seal of this court on this 12th day of July 2023 in the presence of **Mr. Melchior Hurubano**, learned State Attorney and the applicant who has appeared in person, unrepresented.




E.I. LALTAIKA
JUDGE
12.7.2023