

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

**MISC. CRIMINAL APPLICATION NO 49 of 2022**

*(Originating from Criminal Case No 6/2022 Lindi District Court at Lindi)*

**YUSUPH MOHAMEDI.....APPLICANT**

**VERSUS**


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

**RULING**

**Muruke, J.**

Yusuph Mohamed, filed present application for extension of time to file appeal to challenge trial court decision dated 13<sup>th</sup> May 2022. Application is supported by an affidavit sworn by applicant himself. Reason for delay are articulated at paragraph 3, 4, 5, and 6 affidavits in support of application, mainly being delay to be supplied with copy of judgment and proceedings. Respondent counsel Enosh Kigoryo did not object the prayer sought on account of right to be heard.

Indeed, what applicant is requesting before this court is right to be heard on his intended appeal. Having gone through applicant's affidavit, it is worth insisting that, it is a constitutional right to whoever aggrieved to appeal to the superior court. Such right should be accompanied with a right to apply and be granted extension of time if the delay was caused by sufficient reason. To deny extension of time, is equal to denying a person the right to

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exercise his Constitutional right to appeal. In application for extension of time the applicant must show that there is sufficient reason/good cause for the delay. This was held in the case of **The International Airline of the United Arab Emirates V. Nassor Nassor, Civil Application No. 569/01 of 2019 CAT** (unreported) that;

“It is trite law that in an application for extension of time to do a certain act, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time.”

However, despite that constitutional right, yet to extend time is purely vested to the discretion of the court, which discretion has to be exercised judiciously, upon sufficient cause. Indeed, what amount to good cause/sufficient cause is not defined, but it is the duty of the court to treat each case depending on its circumstances as stated in various cases including in the case of **Emmanuel Bilinge Vs. Praxeda Ogwever & Another, Misc. Application No. 168 of 2012** (unreported) it stated that;

*“What constitutes reasonable or sufficient cause – has not been defined under the section because that being a matter for the court’s discretion cannot be laid down by any hard and fast rules but to be determined by reference to all the circumstances of each case.”*

Similar principle was stated in the case of **Regional Manager Tanroads Kagera Vs. Ruaha Concrete Co Ltd, Civil Application No. 96 of 2007**, where the court observed the following:

*“What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by 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 judicial discretion in order to extend time limited by rules” (emphasis supplied).*

In the case of **Zaida Baraka & 2 Others Vs. Exim Bank (T) Limited, Misc. Commercial Cause No. 300 of 2015** (unreported), when quoted the principle developed in the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of Young Women’s Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported) the court stated that;

*“As a matter of general principle, it is the discretion of the court to grant extension of time. But that, discretion is judicial and so it must be exercised according to the rules of reason and justice and not according to private opinion or arbitrarily.”*

Applicant has explained in his affidavit at paragraphs 3, 4, 5 and 6 that, delay to file his appeal on time was caused by being shifted from one prison to another until landed at Lilungu Prison, where he managed to file present application with an assistant of Prison officers. Court of Appeal in the case of **Mobrama Gold Corporation Ltd Vs. Minister for Energy and Mineral, and East African Goldmines Ltd as Intervor [1998] TLR 245**, observed that;

*“It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents’ delay does not constitute a case of procedural abuse or contemptuous default and because the respondent will not suffer any prejudice, if extension sought is granted.”*

What applicant is requesting before this court, is extension of time to file appeal for him to be heard.



In the circumstances explained by the applicant in his affidavit, there is no procedural abuse, more so, respondent will not suffer any prejudice as both will have right to be heard on intended appeal. I am unable to refuse extension sought. Thus, extension of time granted. Applicant to file his appeal within 45 days from 17<sup>th</sup> January 2023, and serve respondent accordingly.



A handwritten signature in blue ink, appearing to read "Z. G. Muruke".

**Z. G. Muruke**

**Judge**

**17/01/2023.**

Ruling delivered in the presence of Enosh Kigoryo State Attorney for the respondent, and applicant in person.



A handwritten signature in blue ink, appearing to read "Z. G. Muruke".

**Z. G. Muruke**

**Judge**

**17/01/2023.**