

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB- REGISTRY OF MANYARA**

**AT BABATI**

**CRIMINAL APPLICATION No. 13 OF 2023**

**NASSORO BAKARI NASSORO.....1<sup>ST</sup> APPLICANT**

**ALLY ATHUMAN BUDO.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

Date: 1/6/2023 & 2/6/2023

**BARTHY, J.**

The applicants aggrieved with the decision of the District Court of Babati, where they were charged, convicted and sentenced to 15 years imprisonment, the applicants intended to challenge the said decision, but unable to do so timely.

Hence, they have preferred the instant application under Section 361 (1) (2) of the Criminal Procedure Act [CAP 20 RE 2022], (the CPA) seeking for the following reliefs;

- 1. That, this honourable court be pleased to extend time of filling petition of appeal out of time in the High Court of*



*United Republic of Tanzania in the sub-registry of Manyara  
at Babati.*

*2. That, this Honourable Court be pleased to make any other  
orders or reliefs as it deems*

The application is supported by joint affidavit sworn by the applicants themselves. On the other hand, the respondent lodged a counter affidavit to contest the application.

At the hearing of this application, the applicants appeared in person while the respondent was represented by Ms. Esther Malima, learned State Attorney. The application was disposed of orally.

In the submission of the first applicant, he prayed to this court to grant him the extension of time to file an appeal out of time, as he could not get any assistance from prison office. He also tried to get the assistance from prison office, but all efforts proved futile until he had to get the assistance from his relatives outside the prison.

On the submission of second applicant, it was in agreement with the arguments raised by the first applicant that he could not get the assistance from the prison lawyer. He added that he tried to raise the concern to the judge and the deputy registrar who visited the prison but to no avail. He therefore prayed for the court to grant him an extension of time.



On the part of the respondent Ms. Malima having adopted the counter affidavit to be part of her submissions, she went further to argue that in accordance to Section 361(1)(b) of the CPA, Cap 20 R.E. 2022 an appeal has to be lodged within 45 days. However, subsection (2) of the same provision permits this court to allow the appeal to be lodged out of time.

To buttress her arguments, she referred to the case of **Benjamin Amon v. Republic**, Criminal Application No. 106/11 of 2018, CAT at Dar es salaam, citing with approval the case of **Bushiri Hassan v. Latifa Lukio**, Civil Application No. 3 of 2007 where the court held, even the delay of one day needs to be accounted for.

She submitted further that in the instant matter the applicants were supposed to give good and sufficient reasons for their delay. As there are conditions to consider before granting the application for extension of time.

She went on arguing that, the applicants in their supporting affidavit on para 3 they stated that they were sentenced on 27/9/2022 and they were supplied with the copy of the decision, whereby they were required to file their notice of intention to appeal early.

Ms. Malima maintained that, the applicants did not act diligently to have his appeal lodged within time considering that this is their second



bite, therefore they are aware of the requirement of the law. She contended that the delay is inordinate as the applicants have delayed for about 177 days which they could not account for.

On further submission the learned state attorney contended that, on paragraph 4 of their joint affidavit it shows that they were looking for money to hire the service of an advocate. It was her submission that, there was no sufficient cause for this court to grant the extension of time.

Ms. Malima also added that, the applicants could even not file the notice of appeal which does not require any costs to be prepared and being filed.

She further pointed out that, in the applicants' affidavit they could not state when they were able to get the money to hire the advocate in the days they had delayed.

In regard to the applicants' arguments that their delay was caused by prison admission office, she contended that this allegation was not deposed anywhere in the supporting affidavit and it required further proof. Likewise, for the second applicant claiming he have complained to the judge and deputy registrar, they were new facts not deposed in the affidavit and they require further proof.

Hence, she urged the court to dismiss the application for lacking of merits.



On a brief rejoinder the first applicant reiterated his submission in chief while the second applicant stated it was hard for them to get proof from prison office.

Having gone through the parties' rival submission, the sole issue for my determination is whether the applicants have advanced sufficient reason for the court to grant them an extension of time.

The instant application has been preferred under Section 361 (1) and (2) of CPA. The law requires an appeal be lodged within 45 days which has to be preceded by notice which is required to be lodged within 10 days of the decision sought to be appealed against.

Should one fail to lodge the appeal within the given time, the remedy is to apply for extension of time under Section 361 (2) of the CPA, which reads;

*361 (2) The High Court may, **for good cause**, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed. [Emphasis added].*

In order to succeed in an application for extension of time, the applicant must demonstrate good cause. However, the quoted provision of the law does not state what constitutes good cause.



As decided in the case of **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010

(unreported) the Court of Appeal stated that: -

*"What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause' is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion"*

It follows therefore that what constitutes good cause depends on the circumstance of each case. However, from decided cases, certain factors provide guidance on whether or not the applicant has shown good cause.

Amongst the factors to be taken into account were succinctly stated in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported) as follows;

*"(a) The applicant must account for all the period for delay;*

*(b) The delay should not be Inordinate;*



*(c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*

*(d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged".*

In the instant application the applicants claimed on paragraph 3 of their joint affidavit that, they were convicted and sentenced on 27/9/2022 to serve 15 years imprisonment. This application was lodged before this court on 2/5/2023. Hence counting from 27/9/2022 when the impugned decision was delivered to the date the instant application was lodged it is almost over 200 days had lapsed.

The applicants claimed to have been in remand prison since 2018 and they could not get any assistance or money to hire the advocates to prepare their documents.

Admittedly as pointed out by Ms. Malima that the affidavit leaves behind some important information such to when exactly the applicants got assistance to lodge the current application. What transpired on each



day and steps taken if any. Such information was necessary for the court to gauge the extent of delay.


However, looking at the circumstance surrounding the matter, it is not in dispute that the applicants have been in custody since 2018. Be it that they could not make free movement to seek legal assistance. On the other hand, they maintained that they requested for assistance from the prison lawyer but they could not get any.

Having considered the circumstance of the case, that there is the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged. Henceforth, for the interest of justice this court exercises its discretion of extension of time and grant the applicants 10 days within which to lodge notice of intention to appeal and 45 days within which to lodge the appeal.

It is so ordered.

**Dated at Babati this 2<sup>nd</sup> June 2023.**



  
**G. N. BARTHY,**  
**JUDGE**

Delivered in the presence of the applicant in person and Ms. Ester Malima the learned state attorney for the respondent.