

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO.18 OF 2023

*(Originating from the District Court of Tandahimba in Criminal Case No.35  
of 2021)*

SALUM SEIF MBONDE.....APPLICANT

*VERSUS*

THE REPUBLIC.....RESPONDENT

RULING

9/6/2023

LALTAIKA, J.

The applicant, **SALUM SEIF MBONDE**, 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. 2019] now the REVISED EDITION 2022. This application is supported by an affidavit affirmed by the applicant on 1/8/2022. 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, appeared for the respondent. The applicant submitted that his affidavit be adopted and form part of his submission.

In response, at the outset Mr. Hurubano supported the application. The learned State Attorney went further and stressed that by virtue of paragraph 5 of the affirmed affidavit the applicant deserve the application. He maintained that the applicant being an inmate depends each and every from the Prison Authority. To this end, Mr. Hurubano submitted that the reason for applicant's delay is a sufficient ground for this court to grant the application. Indeed, the applicant had no rejoinder to address the court.

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 4 and 5 of the affirmed affidavit as well as the applicant's oral submission are that **one**, being an inmate there is 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.

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 inclined 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. Therefore, the applicant is hereby given **ninety (90) days** to lodge his Petition of Appeal effective from the date of this ruling.

It is so ordered.



  
**E.I. LALTAIKA**  
**JUDGE**  
**9.6.2023**

**Court:**

This ruling is delivered under my hand and the seal of this court on this 9<sup>th</sup> day of June, 2023 in the presence of Mr. Melchior Hurubano, learned State Attorney and the applicant who has appeared in person and unrepresented.



  
**E.I. LALTAIKA**  
**JUDGE**  
**9.6.2023**