

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISC. CRIMINAL APPLICATION NO.5 OF 2023**

*(Arising from the District Court of Tandahimba in Criminal Appeal No.6 of 2022 and originating from Tandahimba Primary Court in Criminal Case No.72 of 2022)*

**RUKIA HALIDI NALYONA.....APPLICANT**

**VERSUS**

**ZALMA MATWINI.....RESPONDENT**

**RULING**

*26/6/2023*

**LALTAIKA, J.**

The applicant herein **RUKIA HALIDI NALYONA** is praying for this court to grant him an extension of time within which to lodge a Petition of Appeal out of time. The applicant is moving this court under section 25(1)(b) of the Magistrates' Courts Act [Cap. 11 R.E. 2019] and Rule 10 of the Judicature and Application of Laws (Criminal Appeals and Revisions in Proceedings Originating from Primary Courts) Rules 2021 Government Notice No.360 published on 14/05/2021. This application is supported by an affidavit affirmed by the applicant on 10/01/2023 before Ms. Happyness

Sabatho, commissioner for oaths. Needless to say, that the application has not been resisted by a counter affidavit of the respondent.

At the hearing of this application the applicant has not appeared in person, however, she is being represented by Mr. Emmanuel Ngongi, learned Advocate while the respondent is present in person and without legal representation.

At the outset I have decided to proceed with the hearing of the application on merit on the following reasons **one**, the applicant is represented by a learned counsel conversant with the matter at hand. **Two**, the reasons for her absence are genuine. **Three**, an affidavit is a substitute of oral evidence of the applicant. **Four**, in order to save the precious time of the parties and the court. **Five**, being guided by the spirit of the Overriding Objective Principle which require courts to deal with cases justly, expeditious, proportionate, in affordable manner and to have regard to do substantive justice. In addition, article 107A(2) (e) of the Constitution of the United Republic of Tanzania provides that "to dispense justice without being tied up with technicalities provisions which may obstruct dispensation of justice". **Six**, to accord the applicant with the right to be heard is of the paramount important.

On the part of the applicant, Mr. Ngongi submitted that the application is for extension of time made under section 25(1)(b) of the Magistrates' Courts Act Cap. 11 R.E. 2019 and Rule 10 of the Judicature and Application of Laws (Criminal Appeals and Revisions in Proceedings Originating from Primary Courts) Rules 2021 Government Notice No.360 published on

14/05/2021. He contended that the application is supported by an affidavit by the applicant. Mr. Ngongi prayed the same to be adopted and form part of his submission. The learned counsel stressed that the reasons given is that a copy of the judgement delivered on 23/11/2022 and was received by the applicant on 2/11/2023. He submitted that the applicant was already out of time.

It was the submission of Mr. Ngongi that an appeal originating from the Primary Court to the High Court when they go to the District Court an aggrieved party has only 30 days to appeal. He therefore contended that from 23/11/2022 to 02/01/2023 the applicant was already out of those 30 days as they ended on 22/12/2022. The learned counsel submitted that there was a delay of fourteen days from the date the 30 days ended. More so, the learned counsel submitted that the right to appeal is a constitutional right and the delay was cause beyond the control of the applicant need not be used against her.

In bolstering his argument, Mr. Ngongi referred this court to the case of **Hassan Athuman Fundi vs. Republic**, Misc. Criminal Application No.42 of 2022 whereby My Brother Ngwembe J., held that "This court cannot point a finger to the applicant for such delay, while in fact, he was constrained to exercise his right of appeal due to delay of supply of copies of judgement and proceedings." Mr. Ngongi submitted further that as soon as the applicant received a copy of judgement she came to this court and filed an application for extension of time accompanied by the grounds of appeal as per section 25(1) (b) of the Magistrates' Courts Act which require

the same to be attached to the application. To this end, the learned counsel prayed for grant of the application.

In response, the respondent submitted that the applicant is not telling the truth because they were told to come for copies after a day. She insisted that she got her copy after three days.

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 reason for the delay is featured under paragraph 5 and 6 of the adopted and affirmed affidavit as well as Mr. Ngongi's oral submission.

That the delay by the District Court of Tandahimba to supply the copy of proceedings and judgment on time. It is apparent the judgement of the District Court was delivered on 23/11/2022 while the applicant was supplied with the proceedings and judgment on 02/01/2023 as per attached impugned judgement. Thus, the applicant found she was out of thirty days of lodging her appeal to this court.

In view of the above reason, it is apparent that the delay was caused by factors beyond the ability of the applicant to control and cannot be blamed on her.

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 her 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 her case, she 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,Tanzlii.

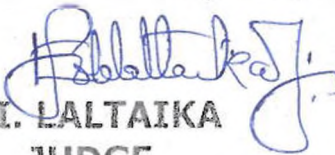
For the foregoing reasons, I find and hold that the applicant has advanced sufficient reason for the delay to warrant this court to exercise its discretion to grant the enlargement sought. Therefore, the applicant is hereby given ninety (90) days to lodge her Petition of Appeal effective from the date of this ruling.

It is so ordered.



  
**E.I. LALTAIKA**  
**JUDGE**  
**26.6.2023**

**Court:** This ruling is delivered under my hand and the seal of this court on this 26<sup>th</sup> day of June 2023 in the presence of Mr. Emmanuel Ngongi, learned Advocate for the applicant and respondent who has appeared in person and unrepresented.

  
**E.I. LALTAIKA**  
**JUDGE**  
**26.6.2023**

