

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TABORA

AT TABORA

MISC. CRIMINAL APPLICATION NO. 20 OF 2023

*(Originating from Criminal Case No. 25 of 2021 of the District Court of
Tabora)*

DANFORD S/O ELIAS.....APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

Date of Last Order: 14/08/2023

Date of Delivery: 14/08/2023

MATUMA, J.

The applicant **Danford s/o Elias** filed this application for extension of time to lodge both notice and petition of appeal out of time against the decision of the District Court of Tabora in Criminal Case No. 25 of 2021 where he was convicted and sentenced for an offence of stealing by agent.

The application is made under section 361(2) of the Criminal Procedure Act, Cap 20 R.E 2019 and section 14 of the Law of Limitation Act, Cap 89 R.E 2019.

At the hearing of this application, the applicant appeared in person while the respondent was represented by Nurdini Mmary and Orester



Kemilembe learned State Attorneys. The applicant opted for the learned State Attorneys to start addressing the court and for him to reply thereafter.

Mr. Nurdini Mmary learned state attorney in his submission supported the application for the reasons started in the applicant's affidavit. He argued that since the applicant is a prisoner, he could not make thorough follow ups of his case. He referred me to the case of ***Maulid Swedi vs The Republic, Criminal Application No. 66/11 of 2017*** where the Court of Appeal at page 7 held that the prisoners' rights and responsibilities are restricted and therefore he deserves to be extended time.

The applicant had nothing more rather than praying to be granted an extension of time as argued by the learned State Attorney.

After having heard both parties, it is a guiding principle that in an application of this nature the applicant is required to account for each day of delay. See; ***Saidi Ambunda vs Tanzania Harbours Authority, Civil Application No. 177 of 2004*** and ***Lyamuya Construction Co. Ltd v. Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010.***

In order to justify his delay, the applicant submitted in his affidavit that the impugned judgment was delivered on 28/06/2022 and on 04/07/2022 he submitted his notice of appeal to the trial Court as required by law. However, he was delayed to receive the copies of the judgment and proceedings which were the necessary materials for him to process his appeal. He received the same on 06/12/2022 and on 12/12/2022 he

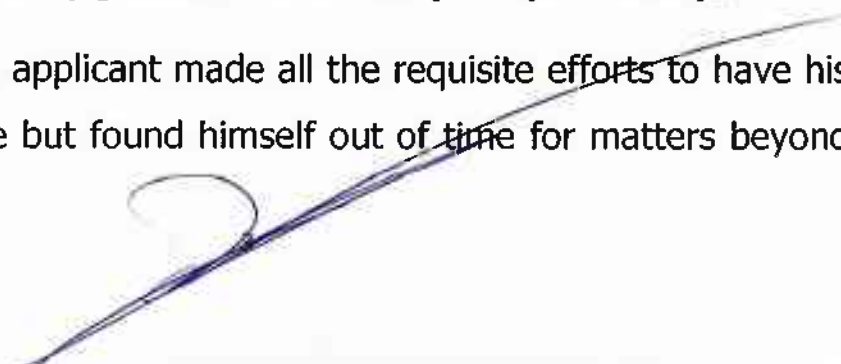
prepared his petition of appeal which was registered online on 28/12/2022.

The applicant further averred that he was never summoned to appear before the High Court for a long time until when he complained to the admission officer of Uyui Central Prison about the fate of his appeal. The prison authority made follow up and informed him that his petition of appeal was not registered as it was time-barred. He was then advised that the only remedy was to apply for an extension of time so that he can file a fresh petition of appeal hence the instant application.

The applicant being a prisoner, his rights and responsibilities are restricted as rightly submitted by the learned State Attorney. He depended much on the follow ups by the prison authorities to receive copies of the impugned judgment and proceedings and also his forwarded appeal to this Court on whether it was admitted or rejected. In the circumstances, the applicant cannot be blamed for the delay of lodging his appeal as it may sometimes be unfair to expect too much from him.

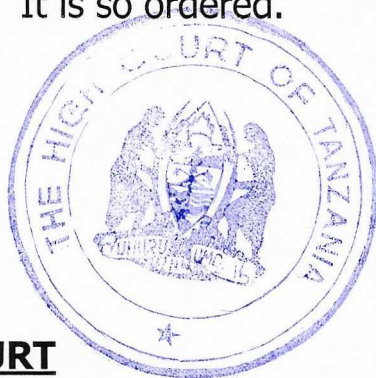
The Court of Appeal has in various decisions considered the situation of prisoners that they are not free agents who can freely lodge matters before the Court and make regular follow-ups on them and thus granted applications for extension of time. In addition to the authority cited by the learned state attorney see also the cases of ***Otieno Obute v. The Republic Criminal Application No. 1 of 2011*** CAT at Mwanza (unreported) and ***Joshua Malendeja vs Republic (Criminal Application 67 of 2017) [2020] TZCA 341 (23 April 2020)***.

In this case the applicant made all the requisite efforts to have his appeal lodged in time but found himself out of time for matters beyond



his control. I have seen even his notice of appeal which was lodged in time and still valid up to date. The Respondent did not file counter affidavit and in fact supported this application. In the circumstances, I find that the application has merit. I extend time for the applicant to lodge his petition of appeal out of time. His notice of appeal is still valid as it was lodged in time. The said appeal should be lodged within thirty (30) days from the date of this ruling.

It is so ordered.



**MATUMA
JUDGE
14/08/2023**

COURT

Ruling delivered in the presence of Nurdini Mmary and Orestor Kemilembe learned State Attorneys for the Republic and in the presence of the applicant in person. Right of appeal explained.



**MATUMA
JUDGE
14/08/2023**