

**IN THE HIGH COURT OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**MISC. CRIMINAL APPLICATION NO. 01 OF 2023**

*(Arising from Criminal Case No.280 of 2021 in the District Court of Bunda at Bunda)*

**BETWEEN**

**ELIAKIMU FRANCIS @ BUNZARI ..... APPLICANT**

***VERSUS***

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

**RULING**

09<sup>th</sup> & 14 August, 2023

**M. L. KOMBA, J.:**

This is an application for extension of time to file Notice of Appeal and later on to Appeal out of time against decision of District Court at Bunda in Criminal Case No.280 of 2021. The application is made by way of chamber summons under section 361 (2) of the Criminal Procedure Act, CAP 20 R. E. 2022 (the CPA). The application is supported by affidavit of the applicant.

When the matter was scheduled for hearing, applicant stood solo without representation while Respondent, the Republic was represented by Mr. Isihaka Ibrahim, a State Attorney.

In support of the application, the applicant had not much to say. He started by praying this court to adopt his affidavit and to allow his application.

In reply Mr. Isihaka said the respondent is objecting this application because applicant has no sufficient reasons for his delay and has failed to account for each day of delay. He prayed his counter affidavit to be adopted. He refers this court to the case of **Zuberi Nassoro Mohamed vs. Mkurugenzi Mkuu Shirika la Bandari Zanzibar**, Criminal Appeal No. 93/15 of 2018 CAT at Zanzibar where CAT have explained sufficient cause to be absence of reason to delay and negligent on the side of the applicant. It was his submission that filing of notice of appeal is not connected with availability of the copy of judgment, he explained further that what was needed was the date on which the judgment was delivered. He argued this basing on affidavit by the applicant that he was delayed with the copy of judgment.

Mr. Isihaka further submitted that applicant at paragraph 6 of his affidavit complained of the ignorance of the matter, on this he submitted that failure to know procedure is not a good cause. On the second limb he submitted that applicant failed to account each day of delay as the

judgment was delivered on 22 December, 2022 and that applicant was in court but he filed the application at hand on 22 January, 2023 which is 20 days more. He prayed this court to utilize its discretion to reject the application. To support his stance Mr. Isihaka, refer the case of **Mwambele Mtumwa Sahame vs. Mohamed Hamisi**, Civil Reference No. 8 of 2016 and the case of **Yazid Kasim Mbakileki vs. CRDB**, Civil Application No.412/04 of 2018 that even a single day has to be accounted. He prays this court to find the application has no leg to stand.

State Attorney presented that section 361 (2) of the CPA was interpreted by Justices of Appeal in **Moroga Mwita vs. Republic**, Criminal Appeal No. 181/2020 CAT at Musoma (unreported) that on good cause court may admit an appeal. It was his submission that, for a court to determine whether to grant or not the determinant factor is explanation of good cause of delay. He explains further that according to the case of **Moroga Mwita vs. Republic** (supra), the applicant should explain good cause and each day has to be accounted. He concluded that the applicant in present application failed to explain and account for 36 days and pray this court to rule so.

In using his opportunity in joinder, the applicant submitted that he was convicted and sentenced to jail so he could not process his appeal and that his relatives are very far they could not support him. That mark the end of submission.

I have given due consideration to both parties' submissions for and against this application. As a matter of principle, it is entirely in the discretion of the court whether to grant or refuse an application for extension of time as it is in section 361 (2) of the CPA. The said provision bestows the High Court with discretion in the following terms:

*'The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.'*

It is trite that extension of time under the above provision is a matter of discretion on the part of the High Court but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case. In emphasize this, I recite the case of **Kassana Shabani & Another vs. Republic**, Criminal Appeal No. 476 of 2007 (unreported) where Court of Appeal had this to say;

*'Since there appears to be a recurring or perennial problem, we would like to take this opportunity to make it dear that once an applicant under section 361 of the Act has **satisfactorily** accounted for the delay in giving notice of appeal or filing a petition of appeal, extension of time ought to be granted as a matter of right'*

The key word from the excerpt is satisfactorily. The applicant filed affidavit which was adopted during submission. In looking for satisfaction in reasons adduced, and for easy of reference paragraph 2 and 3 of the applicant affidavit reads as follows;

*' 2. That I was arraigned and charged at Bunda District court with the offence of stealing by agent and in the end I was found guilty and there after sentenced for imprisonment for a term of six months plus an order to compensate the victim a judgment that was read out on 22<sup>nd</sup> December 2022.*

*3. That following the judgment which was read out by presiding Magistrate at Bunda District Court I was not supplied with a copy of judgment but the same was supplied to me on 11<sup>th</sup> January, 2023 while I was at Bunda prison.*

The applicant was a prisoner who faced challenges in obtaining copy of judgement. This factor is serious for a person who is in prison where his movement and communication are restricted. I agree with State Attorney

that upon delay, and in order for the extension of time to be considered, applicant must explain good cause and has to account for each day of delay. But every general rule must have exception. It has been explained that the applicant was serving imprisonment.

As stated under oath paragraph 2 and 3, it is clearly that the applicant failed to get copies of relevant documents on time. While I agree with the decision in **Mwambele Mtumwa Sahame vs. Mohamedi Hamisi** (supra) and **the case of Zuberi Nassoro Muhamad vs. Mkurugenzi Mkuu Shirika la Bandari Zanzibar** (supra), that applicant should explain good cause and each day has to be accounted, other circumstances too must be considered. Delay in receiving the intended copied caused by the fact that applicant was in jail. This is enough to be a good cause of delay as rightly presented by applicant. The fact that the applicant was a prisoner, his action and movements solely depend on the mercy of the officer-in-charge of the prison and therefore it is unfair to expect much from a prisoner. See **Maneno Muyombe & another vs. Republic**, Criminal Appeal No. 435 of 2016 and **Buchumi Oscar vs. Republic**, Criminal Appeal No. 295 'B' of 2011 (both unreported).

Based on the foregoing analysis, the appellant's pursuit for extension of time had exhibited good cause. In consequence, application is allowed. The applicant is granted leave to lodge Notice of Appeal to the High Court against the decision of District Court at Bunda in criminal case No.280 of 2021 within ten days from the date of delivery of this ruling and thereafter within forty-five days to lodge petition of appeal.

It is so ordered.



  
**M. L. KOMBA**

**Judge**

**14 August, 2023**