

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO.41 OF 2023

*(Originating from the District Court of Tandahimba at Tandahimba in
Criminal Case No.76 of 2022)*

ATHUMANI SAIDI CHAMPUNGA @ TETE.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

21/8/2023

LALTAIKA, J.

The applicant, **ATHUMANI SAIDI CHAMPUNGA @ TETE**, 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. 2002] now the REVISED EDITION 2022. This application is supported by an affidavit affirmed by the

applicant on 06/07/2023. It is worth noting that the respondent has not filed a counter affidavit to resist this application.

When this matter was called on for hearing the applicant appeared in person, unrepresented while Ms. Atuganile Nsajigwa, learned State Attorney appeared on behalf the respondent/Republic. At the outset the learned State Attorney submitted that the application is for extension of time to appeal out of time. She contended further that on the 5th paragraph the applicant has alleged that he received late copies of the judgement and proceedings on 2/6/2023 that is more than six months after judgement. Furthermore, the learned State Attorney averred that it was beyond applicant's ability that is why they agreed with the application. To this end, Ms. Nsajigwa prayed the application to be granted. On the part of the applicant had nothing to add.

Having dispassionately 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 5, 6 and 7 of the affirmed affidavit as well as respondent's oral submission is 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 applicants to control and cannot be blamed on him.

The next issue I have to resolve is whether or not the reasons stated by the applicant amount to good cause. Our law does not define what amount to good/sufficient cause. However, in the case of **Shanti v. Hindochie and Another** [1973] E.A. 207, the Erstwhile Court of Appeal for East Africa considered similar phrase, "sufficient cause" to mean the

" . . the more persuasive reason . . . that he can show is that the delay has not been caused or contributed by dilatory conduct on his part. But that is not the only reason."

In addition, in **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 state that the applicant has advanced good cause for their delay to lodge their Petition of Appeal out of time. The chain of events explained in the applicant's affidavit, as well as the respondent's 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 displayed apathy, negligence or sloppiness in the prosecution they intend to take, as 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.

Based on the foregoing reasons, I find and conclude that the applicant has provided good/sufficient reasons for the delay, warranting this court to exercise its discretion in granting the requested extension of time. Therefore, the applicant is hereby granted forty-five (45) days from the date of this ruling to lodge their Petition of Appeal.

It is so ordered.



E.I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

JUDGE

21.8.2023

This ruling is delivered under my hand and the seal of this court on this 21st day of August 2023 in the presence of Ms. Atuganile Nsajigwa, learned State Attorney and the applicant who has appeared in person and unrepresented.



E.I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

JUDGE

21.8.2023