

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOROGORO SUB-REGISTRY)
AT MOROGORO**

MISC. CRIMINAL APPLICATION NO. 25 OF 2023

**(Originating from Criminal Case No. 52 of 2022, In the District Court of
Mvomero, at Mvomero)**

BETWEEN

EPIMACK CHILONGOLA APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

31st August, 2023

M..J. CHABA, J.

Epimack Chilongola, the applicant herein, has lodged this application under the provision of section 361 (2) of the Criminal Procedure Act, [CAP: 20 R. E, 2022], (the CPA) moving this Court to enlarge time within which he can lodge his appeal against the judgment of the District Court of Mvomero, at Mvomero in Criminal Case No. 52 of 2022. The application was preferred by way of Chamber Summons supported by an affidavit sworn by the applicant himself and presented for filing on the 25th day of August, 2023.

It is apparent that, this application has not been contested by a counter affidavit of the Respondent / Republic.

So, when the application was placed before me for hearing, the applicant appeared in person remotely by video conference linked from Wami Kuu



Prisons. Mr. Shabani Abdallah Kabelwa, the learned State Attorney entered appearance for the Respondent / Republic.

Addressing the Court in support of the application, the applicant prayed to adopt his affidavit and the same be made part and parcel of Court proceedings and urged the Court to grant him with the leave to file the appeal out of time. Onset, Mr. Kabelwa did not resist the application, and briefly implored the Court to grant the orders sought by the applicant for extension of time within which to appeal out of the statutory time.

Having considered the applicant's application and the supporting affidavit sworn by the applicant himself and taking into account that the application is not opposed by the Respondent / Republic, my task is to decide as to whether the instant application has merit or otherwise.

It is trite law that, application(s) of this nature are entirely in the discretion of the Court to grant or refuse. The Court may grant the application only where it has been sufficiently established that, the delay was justified with sufficient or good cause. **See: Mumello Vs. Bank of Tanzania (Civil Appeal 12 of 2002) [2006] TZCA 12 (12 October 2006);** Media neutral citation [2006] TZCA 12 and **Jaluma General Suppliers Ltd Vs. Stanbic Bank T. Ltd (Civil Appeal 34 of 2010) [2011] TZCA 123 (01 February 2011);** Media neutral citation [2011] TZCA 123, both extracted from www.tanzlii.org.tz).

In this application, the reasons for the applicant's delay are found under paragraphs 8 and 9 of the affidavit in support of the application which states that: One; The delay was caused by circumstances out of his control including being under Prisons Custody, Two; Inaccessibility of legal service from an advocate, and Three; The intended appeal stands chance of success on the grounds enumerated under paragraph 9 (i) – (vii).

On my part, in view of the above stated reasons and oral submission made by the applicant, I am settled in my mind that, the delay was caused by factors beyond the ability of the applicant to control as a prisoner and cannot be blamed as such. Being an inmate, it is apparent that the applicant's life, rights and responsibilities are confined and controlled by the Prisons Authority. In such circumstance, it is not expected that the applicant will act expediently taking into account that, he is all the time entirely depending on the assistance from such an Authority.

Upon being faced with much similar situation, the Court of Appeal of Tanzania in the case of **Otiemo Obute Vs. Republic**, Criminal Application No. 1 of 2011, CAT sitting at Mwanza, (unreported), held:

"I have considered the averments by both parties and come to the conclusion that this application has merit. As a prisoner, his rights and responsibilities are restricted. Therefore, he did what he could do. He may have been let

down by reasons beyond his means... Accordingly, the application is granted."

Equally, this Court upon being confronted by an application for extension of time to appeal out of time from a Prisoner in **Rhobi s/o Kitang'ta Chacha Vs. The Republic (Criminal Application 58 of 2022) [2023] TZHC 305 (16 February 2023)** (Extracted from www.tanzlii.org.tz), it was held thus:

"....the applicant pursued for extension of time and has exhibited good cause bearing in mind that he is in prison as was observed in the case of Maneno Muyombe & Others Vs. R Criminal Appeal No. 435/2016 (unreported). **Being inmates serving time in prison, the appellant invariably had no control over the affair in that there were necessary at the mercy of the officer in charge of their prisons as it were in this regard it was unfair to expect too much from them. In consequence, application is allowed.**" [Bold is mine].

Applying the above authorities underscored by this Court and the Court of Appeal of Tanzania, I am satisfied that, the applicant has shown a good cause to warrant this Court grant the prayers sought by the applicant for a reason that, he has acted diligently without negligence and apathy in pursuing for the action he intends to take.

In view of the above observations, I find it safe to hold that the applicant has advanced sufficient reasons for the delay to warrant this Court exercise its discretionary power to grant and extend the time to appeal to this Court against the impugned decision of the District Court of Mvomero, at Mvomero in Criminal Case No. 52 of 2022.

Consequently, I allow the application and the applicant is hereby given twenty-one (21) days to lodge his appeal effective from the date of this ruling. I so order.

DATED at **MOROGORO** this 31st day of August, 2023.



M. J. Chaba
M. J. CHABA

JUDGE

31/08/2023

Court:

Ruling delivered under my Hand and the Seal of the Court this 31st day of August, 2023 in the presence of Mr. Shabani A. Kabelwa, Learned State Attorney who entered appearance for the Respondent / Republic and the Applicant who appeared in person remotely by video conferencing linked from Wami Kuu Prisons.



A handwritten signature in blue ink, appearing to read "M. J. Chaba".

M. J. CHABA

JUDGE

31/08/2023

Court:

Right of Appeal to the parties fully explained.



A handwritten signature in blue ink, appearing to read "M. J. Chaba".

M. J. CHABA

JUDGE

31/08/2023