

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO.65 OF 2023

*(Originating from the District Court of Lindi at Lindi in Criminal Case No.52  
of 2022)*

MOHAMED RASHID MTENGO.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

*18/10/2023*

LALTAIKA, J.

The applicant, MOHAMED RASHID MTENGO, is seeking extension of time within which to lodge 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

14/09/2023. It is worth noting that the respondent has not filed a counter affidavit to resist this application.

During the hearing, the applicant appeared in person, without representation, while **Mr. Melchior Hurubano**, learned State Attorney, appeared on behalf of the respondent.

On the part of the applicant submitted that he was sentenced by the District Court of Lindi on 30/1/2023. The applicant contended that he is determined to appeal against that decision. He insisted that he has applied to appeal out of the prescribed time.

In response, at the outset Mr. Hurubano did not object the application. The learned State Attorney contended that the applicant vide his affidavit particularly under paragraph 5, 6 and 7 have indicated that the reasons for the delay. Mr. Hurubano submitted that the applicant pointed out that he was sentenced on 30/01/2023 and only received the copies of the documents on 30/3/2023. The learned State Attorney insisted that the applicant asserts at paragraph 7 that he is inmate whose freedom is curtailed, prayed the application be granted.

Having reviewed the applicant's application and the submissions from both parties, I am inclined to determine the merit of the application. The main reasons for the delay, as outlined in paragraphs 5,6 and 7 of the affirmed affidavit, as well as the oral submissions, are the delay in receiving a copy of the judgment and proceedings ,and being an inmate there is curtailment of the applicant's right to liberty which made him unable to follow up his case.

In view of the above reasons, it is apparent that the delay was caused by factors beyond the ability of the applicant to control and cannot be blamed on him. The next issue I am inclined 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 **TCCA Investment Company Limited vs DR. Gideon H. Kaunda** the Court of Appeal of Tanzania cited with approval the decision of the Erstwhile Court of Appeal for East Africa in the case of **Shanti v. Hindochie and Another** [1973] E.A. 207, the Court stated:-

*"... 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 fortified 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 thirty (30) days from the date of this ruling to lodge his Petition of Appeal.

It is so ordered.



  
**E.I. LALTAIKA**  
**JUDGE**  
**18.10.2023**

**Court:**

This ruling is delivered under my hand and the seal of this court on this 18<sup>th</sup> day of October 2023 in the presence of Mr. Melchior Hurubano, learned State Attorney and the applicant who has appeared in person and unrepresented.



  
**E.I. LALTAIKA**  
**JUDGE**  
**18.10.2023**