

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB-REGISTRY

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 38 OF 2023

(Originating from Loliondo District Court via Criminal Case No. 33 of
2022)

ISSA ABDILLAHAPPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

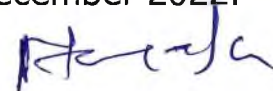
RULING

23 & 23/11/2023

MWASEBA, J.

The applicant, **Issa Abdillah**, lodged this application by way of chamber summons, made under **Section 361 (2) of the Criminal Procedure Act**, Cap 20, R.E 2022, and supported by an affidavit sworn by the applicant himself.

In this application, the applicant is in pursuit of extension of time within which to file notice of intention to appeal and an appeal against the Judgment and Decree of the Longido District Court via Criminal Case No. 33 of 2022 which was delivered on 21st day of December 2022.



When the application was called for hearing on 23/11/2023, Ms. Getrude Mreme and Mr. Hamis Mayombo, learned counsels from Legal and Human Rights centre represented the applicant whilst Ms. Neema Mbwana, learned State Attorney represented the Respondent.

Prior to the hearing of the application, Ms. Neema submitted that after going through the affidavit of the applicant which supports the application, they do not intend to object the application as he has reasonable cause for his delay to file the notice and appeal.

On her side, Ms. Mreme learned counsel prayed for their affidavit to be adopted and form part of her submission and added that as long as the application was not objected they pray for the same to be granted and the applicant be allowed to file notice of intention to appeal and an appeal out of time.

Having heard the submissions of the learned counsel for the applicant and respondent the court will now determine the merit of the application.

It is settled that where extension of time is sought, the application will be granted, upon demonstrating sufficient cause for the delay. The same was held in the case of **Cosmas Faustine v. Republic** (Criminal



Application 76 of 2019) [2020] TZCA 1905 (17 December 2020) (Tanzlii)

inter alia that:

"... the court can only grant an application for extension of time subject to the applicant meeting the following conditions namely; reason and length of the delay, accounting for each day of the delay, absence of diligent negligence or sloppiness in preferring the application and in fitting cases, existence of an issue of illegality of sufficient public importance, in the impugned decision."

That being the position, I have gone through the applicant's affidavit in support of the application and noted that, the reasons for being late to file his notice of intention to appeal and an appeal within the prescribed time was out of his control. After the decision of the Longido District Court on 21/12/2022 which grieved him, he requested to be supplied with the copies of proceedings and judgment. The same were handed over to Arusha Central Prison at admission office on 4th January, 2023.

However, those documents were misplaced so he failed to prepare his reasons for the appeal within time. The applicant wrote another letter requesting those documents and they were supplied to him on 17th August, 2023. Therefore, he insisted that so long as he is serving his custodial sentence in prison it will be fair for the court to give him a chance to file his appeal out of the prescribed time.



Based on the reasons advanced by the applicant and taking into consideration that the respondent did not object the application, this court is of the firm view that the applicant did advance sufficient cause for the application of extension of time to be granted.

In short, the extension of time is granted to the Applicant to file his notice of intention to appeal out of time within 14 (Fourteen) days and his appeal within 30 (Thirty) days from the date of this ruling.

It is s ordered.

DATED at **ARUSHA** this 23rd day of November, 2023.


 **N.R. MWASEBA**
JUDGE