

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
DODOMA DISTRICT REGISTRY**

**AT DODOMA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 41 OF 2023**

(Arising from the decision of Dodoma District Court in Criminal Case No. 11 of 2020)

**GISLARY CAPS APOGO.....APPELLANT**

**VERSUS**

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

**RULING**

Last Order: 08<sup>th</sup> November 2023

Date of Judgment: 06<sup>th</sup> December 2023

**MASABO, J:-**

A leave for an extension of time is sought to enable the applicant to file a notice and a petition of appeal out of time against a decision of District Court of Dodoma in Criminal case No. 11 of 2020 by which he was convicted of rape and sentenced to 30 years imprisonment, a compensation of Tshs 500, 000/= to the victims and 12 strokes of the cane. The application is by way of chamber summons made under section 361 (2) of the Criminal Procedure Act, Cap. 20 R.E 2022. The application is supported by an affidavit of the applicant, Gislary Caps Apogo. The application is contested by the respondent who filed a counter on 01<sup>st</sup> August 2023.

On 08<sup>th</sup> of November 2023, the parties appeared before me for a *viva voce* hearing. The applicant appeared in person unrepresented whilst Ms. Patricia Mkina, learned State Attorney appeared for the respondent. In support of

the application, the applicant adopted his affidavit and left the matter to the court.

In reply, Ms. Mkina, learned State Attorney objected the application and submitted that the application is devoid of any merit as the grounds demonstrated in the affidavit shows that the applicant was negligent. Right after the conviction and sentence, the trial court notified him of his right to appeal but he took no steps in lodging a notice of appeal when he went to prison. Thus, the delay was totally due to his apathy and negligence and he has none but himself to blame. In conclusion she prayed the application to be dismissed for want of good cause.

I have given due consideration to affidavit filed by the applicant in support of his application and the submission by the learned State Attorney. As per section 361(1) of the Criminal Procedure Act, a person who is aggrieved by a conviction and sentence of subordinate court is required by law to lodge a notice expressing his intention to appeal within ten (10) days from the date of the conviction or sentence and to lodge his petition of appeal within forty-five (45) days. This period may be enlarged under section 361(2) of the Act. As a matter of principle, the enlargement of time to enable the applicant to file his notice and petition of appeal out of time is entirely within the discretion of the court. Nevertheless, such discretion being judicial need be judiciously exercised upon a good cause been demonstrated. Put otherwise, the discretion must be exercised judiciously and flexibly with due regard to the peculiar facts of the particular case. In the case of **Kassana Shaban**,

**and Another vs. Republic**, Criminal Appeal No. 476 of 2007 (Unreported)  
the Court of Appeal had this to say regarding the exercise of discretion:

Since there appears to be a recurring or perennial problem, we would like to take this opportunity to make it clear 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 phrase from this excerpt is "satisfactorily accounted for the delay". Accordingly, the immediate question for determination is whether the applicant has satisfactorily accounted for the delay. Answering this question requires me to interrogate the applicant's chamber summons and his disposition in the affidavit accompanying it. From these two documents, it is deciphered that the applicant was convicted and sentenced on 15<sup>th</sup> September 2020. Thus, he only had 10 days and 45 days to file his notice and the petition of appeal, respectively. Both have hopelessly lapsed when he filed the present application on 19<sup>th</sup> April 2023 as more than two years and 6 months had lapsed since his conviction.

The factors that delayed him from timely lodging his notice and petition of appeal are deponed in paragraphs 3, 4, and 5 of his affidavits which I hereby reproduce for easy of reference.

3. That, I am in incarceration since I was arrested and all matters concerning appeal lie on prison officials

responsible for the same, and I am a layman in the field of law so I know nothing about appeal procedures, as a result one told me that for the purpose of making an appeal I must be supplied with the copy of judgment and proceeding.

4. That, since I was in Isanga Central Prison I had never been supplied with a copy of judgment and proceeding, I tried so hard to make things happen through Isanga Admission Office and such office communicated with the trial court, surprisingly nothing happened until 7<sup>th</sup> March 2023, when I received only a copy of judgment for the first time.

5. That, after receiving the copy of judgment, something came to my mind that there is injustice during the delivery of the decision of the trial court, hence this application.

What is discernible from these three paragraphs is that, two factors inhibited the applicant from filing his notice and petition of appeal on time, namely ignorance of the law and delay in being furnished with the copy of proceedings and judgment. The first ground is outrightly rejected for want of merit as the law is very well settled that, ignorance of the law is not a good cause warranting an extension of time. As stated by the Court of Appeal

in the cases of **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No 10 of 2015 [2016] TZCA 302 TanzLII:

As has been held times without number, ignorance of the law has never featured as a good cause for extension of time.

Coming to the second ground concerning delays in being furnished with the copy of proceedings and judgment, the law recognises the delay in obtaining a copy of proceedings and judgment as a good cause for extension of time. In fact, section 361(b) mandates this court to exclude from computation all the time during which the applicant was waiting to be furnished with the copies of judgment and proceedings. The reasons are too obvious. The copy of proceedings and judgment are essential tools for one to comprehend the judgment, the reasons thereto as well as their validity or otherwise. In their absence, one may not make a right and an informed decision of whether or not to appeal.

In the present case, the duration that had lapsed before the applicant filed this application is 2 years and 6 months. Much as the law permits the exclusion of the time during which the applicant was waiting to be furnished with the copy of the judgment and proceedings, for such an inordinate period to be excluded, there must be a plausible explanation as to what inhibited the applicant from obtaining the judgment and proceedings. From the affidavit, the sole explanation rendered by the applicant is that, being a prisoner, he was totally reliant on assistance from prison authorities as his

movement and communication with the outside world is limited. In my firm view, the explanation rendered is solid and has earned the applicant a positive consideration for his application. This court and the Court of Appeal has on numerous authorities considered such explanations as a good cause for applicants who are in prison because their actions and movements solely depend on the mercy of the officer-in –charge of the prison. For instance, in the case of **Maneno Muyombe and Another vs. Republic**, Criminal Appeal No. 435 of 2016 [2019] TZCA 260, TanzLII, the Court of Appeal faced with a similar situation held that:

Being inmates serving time in prison, the appellants invariably had no control over their affairs and that they were necessarily at the mercy of the Officer-in –charge of their prison, as it were. In this regard, it was unfair to expect too much from them-see for example, **Buchumi Oscar v. Republic**, Criminal Appeal No. 295 B of 2011 and **William Ndingu @ Ngoso v. Republic**, Criminal Application No. 3 of 2014

In the foregoing, I have found the applicant to have demonstrated a good cause for extension of time. In consequence, the application is allowed. The applicant is granted leave to lodge the notice of appeal within ten (10) days from today and thereafter to file his appeal with thirty (30) days.

**DATED at DODOMA** this 6<sup>th</sup> day of December, 2023



A handwritten signature in blue ink, consisting of stylized loops and a long horizontal stroke.

**J. L. MASABO**  
**JUDGE**