

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(MOROGORO DISTRICT REGISTRY)**

**AT MOROGORO**

**MISC. CRIMINAL APPLICATION NO 04 OF 2023**

**[ARISING FROM CRIMINAL CASE NO 137 OF 2019 AT MOROGORO  
DISTRICT COURT]**

**EMMANUEL NGOILA ..... APPLICANT**

**VERSUS**

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

**RULING**

**Date of last order: 26/01/2023**

**Date of ruling: 30/01/2023**

**MALATA, J**

This ruling is in respect of the application for extension of time within which to file petition of appeal. The application is by way of chamber summons made under section 361(2) of the Criminal Procedure Act, Cap 16, R.E 2022 is supported by an affidavit deposed by the **EMMANUEL NGOILA**, the applicant herein.

The applicant was charged and convicted for offence of attempt to commit unnatural offence contrary to section 155 of the Penal Code, Cap 16 R.E 2002. Upon being called to enter plea, the accused pleaded guilty and convicted and sentenced to serve twenty years imprisonment. Aggrieved thereof, wants to challenge the judgment, however he find already caught

by time bar, thence, the present application for extension of time. The respondent was served with a copy of chamber summons but elected to file no counter affidavit, thus, the application passed evidentially uncontested.

On the hearing date both parties were all in attendance, the applicant appeared in person unrepresented, while the respondent appeared through Mr. Emmanuel Kahigi, the learned State Attorney.

The applicant asked the court to honour the application and grant the sought orders and that he had nothing much to argue at the stage.

~~In reply thereof, Mr. Emmanuel Kahigi, learned State Attorney~~ informed the court that, the Republic is not opposing the application. He assigned reasons, among others, **one**, gravity of the sentence, **two**, good cause adduced through affidavit. Finally, he submitted that, it is in the interest of justice that, the applicant be heard on merits.

By way of rejoinder, the applicant had nothing but prayed the application to be granted.

Having heard the application, this court gathered one issue for determination, whether the applicant has shown sufficient reason to for delay.

It is trite law that, for the court to exercise its discretion power to extend time, the applicant has to satisfy that, there exist good cause for the delay. However, what constitutes good cause has not been defined by the law. It all depends on the circumstances of each case. The Court of appeal in the case of **John Dongo & others vs. Lepasi Mbokoso, Civil Application no.14/01 of 2018**, once held that;

*"The power vested in the court in extending time must be exercised judiciously; particularly, when determining "good cause" by considering circumstances of each case."*

And that is the spirit of section 361(2) of Criminal Procedure Act which provides that;

*(2) The High Court may, **for good cause**, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.*

Having heard the submissions from both parties, the issue for determination is whether the applicant has advanced good cause for delay to warrant grant of extension of time.

I have given due consideration of the circumstances and reasons advanced by the applicant, that the applicant filed the notice of intention to appeal within ten days as required by law and he was supplied with the copies of the judgment. However, there was a delay in sending the petition of appeal by the prison officer who was obliged to transfer the documents to court, the delay was not caused by the applicant but the prison officer. The delay, thus, falls outside the applicant's control.

Further, the fact that the applicant was in prison, thence not a free agent to do what he wished to, it goes without saying therefore that, he was not in control of the game and had nothing to do in case of any worse scenario leading to delay.

The court of appeal in numerous cases including but not limited to the case of **Kabisa Sabiro and Two others versus Republic, Criminal Appeal No.191 of 2010** CAT (Unreported) held that;

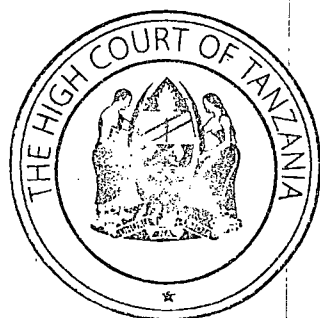
*"The appellant being in prison, it is to be expected that every action they take has to be through those under whose authority they are."*


Based on the said reasons for delay and principles governing extension of time under the prevailing circumstances, I am satisfied beyond sane of doubt that, the applicant has shown sufficient reasons to warrant this court exercise its discretionary powers to grant extension of time.

Consequently, this court exercises, it's exclusive discretionary mandate and hereby grant the application. Further, the application is granted on condition that, the applicant should file an appeal within **twenty-one (21) days** from the date of this order.

It is so ordered.

**DATED at MOROGORO** this 30<sup>th</sup> January 2023.



  
G. P. MALATA  
JUDGE  
30/01/2023