

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

MISC. CRIMINAL APPLICATION NO. 02 OF 2023

**(Arising from criminal case no. 249 of 2017, Kilosa District
Court at Morogoro)**

MIRAJI ALLY @ KHOI APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

DATE OF LAST ORDER: 17/01/2023

DATE OF RULING: 17/01/2023

MALATA, J

The applicant herein above filed this application under section 361(2) of the Criminal Procedure Act, Cap 20, R.E 2019 seeking for extension of time within which to file an appeal out of time.

The application was supported by where the applicant stated the reasons for the delay. He stated that, the delay was due to effect of striking out the application for being defective.

When the matter was called up for hearing, the applicant appeared in person (unrepresented) and the Respondent enjoyed the service of Mr. William Dustan, learned State Attorney.

At the hearing, the applicant prayed the court to consider the application based on the affidavit in support thereto and grant the sought orders.

Mr. William Dustan learned State attorney informed the court that upon perusal of the application for extension of time and the reasons advanced for failure to file an appeal within time, he had no reason to object the application.

The applicant had nothing to re-join but insisted to the court to grant the prayers as it appears in the application.

This court has taken consideration of the submission from both parties as well as the reasons advanced by the applicant in support of his application for extension of time, the issue for determination is whether the applicant has shown sufficient cause for the delay.

To start with, for an application for extension of time to be granted the applicant must advance good cause for the delay. This position is echoed through by section 361(2) of the Criminal Procedure Act, Cap 20 R.E. 2019 that reads;

"S. 361 (2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed."

Furthermore, the Court of appeal in the case of **Hamisi Mahona Vs Republic, Criminal Appeal No. 141 of 2017** (unreported) had an opportunity to discuss the thrust of section 361(2) of the CPA and stated: that;

"the High Court may, for good cause, admit an appeal". That means, for the court to determine whether it should grant extension of time to file appeal or not, the sole determinant factor is whether or not the applicant has established good cause explaining the delay."

From above, the court has power to extend time to do any act where a party has failed to do within certain prescribed time period. The power is discretionary but has to be exercised judiciously. This means that, there must be tangible evidence proving existence the fact that, the applicant

was prevented by genuine reasons or there exist illegalities in the judgment, among others, in which the court can exercise its discretionary mandates to weigh on whether to grant or not.

In this case the applicant had lodged an appeal registered as criminal appeal no.198 of 2018, however it was struck out on technical grounds.

While the applicant was in the process of going back to court, he noted that the appeal was already time barred, thence the present application.

The applicant indicated further that there was no dilatory conduct on his part and that he promptly filed this application seeking redress

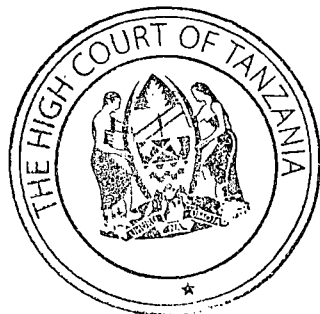
Upon scrutinization the advanced reasons, I am satisfied that the applicant has advanced good cause for delay and took necessary steps to pursue his appeal but it was struck out on technical ground. However, he came back to court instantly by filing the present application.

This court has no good cause to disallow this application which met all the qualification for being granted and passes unopposed by the Republic itself.

Consequently, this court grants an extension of time within which to file an appeal out of time. The applicant is therefore granted twenty-one (21) days within which to file appeal.

It is so ordered.

DATED at **MOROGORO** this 17th January 2023.




G. P. MALATA

JUDGE

17/01/2023