

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DISTRIC REGISTRY OF MUSOMA**

**AT MUSOMA**

**MISC. CRIMINAL APPLICATION NO. 58 OF 2022**

(Originating from Criminal Case No. 671 of 2017 in the District Court of Tarime at Tarime)

**BETWEEN**

**RHOBI S/O KITANG'ITA CHACHA ..... APPLICANT**

**VERSUS**

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

**RULING**

13 & 16 Feb, 2023

**M. L. KOMBA, J**

This is an application for extension of time within which to appeal out of time to this court against decision of District Court of Tarime at Tarime in Criminal Case No. 671 of 2017. The application is made by way of chamber summons under section 361 (1) (a) (b) and section 2 of Criminal Procedure Act, CAP 20 R. E. 2019 (the CPA). The application is supported by affidavit of **RHOBI S/O KITANG'ITA CHACHA**, the applicant.

It is trite that extension of time under the above provision is a matter of discretion on the part of the High Court but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case. In emphasize this, I recite the case the case of **Kassana Shabani & Another v. Republic**, Criminal Appeal No. 476 of 2007 (unreported) where Court of Appeal had this to say;

*'Since there appears to be a recurring or perennial problem, we would like to take this opportunity to make it dear 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 word from the excerpt is satisfactorily. The applicant filed affidavit which was adopted during submission. In looking for satisfaction in application an reasons adduced, what I gathered from his affidavit is that applicant was moving from one prison to another and there is possibility of delay in receiving the copy of judgement. He was sentenced while at Tarime and he was transferred to Butimba prison, then from Butimba to Kiberege prison in Morogoro and when this application was heard he was connected from Musoma Prison. Moreover, paragraph 4 and 5 of the applicant affidavit reads as follows;

When the matter was scheduled for hearing, applicant was remotely connected from Musoma Prison, stand solo unrepresented, while Respondent, the Republic was represented by Mr. Isihaka Ibrahim, State Attorney.

In support of the application, the applicant did not have much to say. He started by praying this court to adopt his affidavit and prayed for extension of time so that he can appeal out of time. The only reason adduced by him is delay in receiving copy of judgment.

In reply Mr. Isihaka said the respondent is not objecting this application and pray the court to consider the application so that an applicant can utilize his right to appeal.

I have given due consideration to both partys' short submission for and against this application. As a matter of principle, it is entirely in the discretion of the court whether to grant or refuse an application for extension of time as it is in section 361 (2) of the CPA. The said provision bestows the High Court with discretion in the following terms:

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

4. *That I wrote a letter to Principal Resident Magistrate of Tarime District Court requesting him to supply me a copy of judgement and proceedings but my request ended in vain since the said copy was supplied to me 30<sup>th</sup> June 2022 which was seriously out of time for lodging petition of appeal.*
5. *That I intend to file fresh appeal because my appeal was struck out for being out of time limit.*

The applicant is a prisoner. As stated under oath paragraph 4 and 5, it is clearly that the applicant failed to get copies of relevant documents on time. Based on the foregoing analysis, the appellants' pursuit for extension of time had exhibited good cause bearing in mind that he is in prison as was observed in the case of **Maneno Muyombe & Another vs. Republic**, Criminal Appeal No. 435 of 2016 (un reported) 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.'*

In consequence, application is allowed. The applicant is granted leave to lodge notice of appeal to the High Court against the decision of District Court at Tarime Criminal Case No. 671 of 2017 within thirty days (30) from the date of delivery of this ruling.



  
**M. L. KOMBA**

**Judge**

**16 February, 2023**