

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DISTRIC REGISTRY OF MUSOMA
AT MUSOMA

MISC. CRIMINAL APPLICATION NO. 46 OF 2022

(Originating from Criminal Case No. 60 of 2017 in the District Court of Tarime at Tarime)

BETWEEN

JUMA CHACHA TUNGUCHA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

22nd & 22nd February, 2023

M. L. KOMBA, J.:

This is an application for extension of time with which to lodge petition of appeal out of time to this court against decision of District Court of Tarime in at Tarime Criminal Case No. 60 of 2017. The application is made by way of chamber summons under section 361 (2) of Criminal Procedure Act, CAP 20 R. E 2022 (the CPA). The application is supported by affidavit of **JUMA CHACHA TUNGUCHA**, the applicant.

When the matter was scheduled for hearing, applicant was remotely connected from Mbigiri 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 prayed this court to adopting his affidavit and prayed for extension of time so that he can appeal out of time. The only reason is delay in receiving copy of judgement from trial court.

In reply Mr. Isihaka submitted that after reading affidavit of the applicant specifically paragraph 4, the respondent is not protesting the applicant application.

I have given due consideration to both parties' short submissions for 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.'

It is trite law 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, the case of **Kassana Shabani &**

Another vs. Republic, Criminal Appeal No. 476 of 2007 (unreported) is of relevance where the 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 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 word from the excerpt is satisfactorily. The applicant filed affidavit which was adopted during submission. In looking for satisfaction in application and reasons adduced, what I gathered from paragraph 3 and 4 of his affidavit is that apart from being late in receive a copy of judgement,(convicted on 09/01/2019 and the copy of judgement was supplied on 01/12/2020) applicant is a convict who submitted his appeal through prisons officers and he was unable to dictate them to lodge the same on time as a result he is out of time.

The paragraph reads as follows;

- 3. That on 02/12/2020 prison authority transfers the petition of appeal.*
- 4. That from the date of transfer up to date no avail to the result of the petition (sic), despite several application through prison*

authority via letter with Ref. No. 112/MOR/10.VI/2036 of 25/05/2022 attached here with this application.

Based on the foregoing analysis, the appellant's pursuit for extension 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 (unreported) 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.'

For that reason, application is allowed. The applicant is granted leave to lodge petition of appeal to the High Court against the decision of District Court at Tarime in Criminal Case No. 60 of 2017 within thirty days (30) from the date of delivery of this ruling.

GIVEN under my **HAND** and seal of the court.



NK
M. L. KOMBA

Judge

22nd February, 2023