

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MOROGORO DISTRICT REGISTRY**

**MOROGORO**

**MISC. CRIMINAL APPLICATION NO. 03 OF 2023**

***(Arising from criminal case no. 240 of 2017 at Morogoro District Court)***

**SELEMANI BAKARI .....APPLICANT**

**VERSUS**

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

**RULING**

**Date of last Order: 17/01/2023**

**Date of ruling: 17/01/2023**

**MALATA, J**

This ruling is in respect to an application for extension of time to file an appeal preferred under section 361(2) of the Criminal Procedure Act, Cap.20 R.E.2022. The applicant filed chamber application supported by his sworn affidavit. The application contains prayers to the effect that;

1. this honourable court be pleased to grant leave for extension of time to file a fresh petition of appeal out of time in criminal case no. 240 of 2017.

2. this honourable court be pleased to grant any other order (s) it may deem fit and just.

Briefly, the applicant stood arraigned for one count of rape contrary to section 130 (1) (2) (e) and 131 (1) of the Penal Code, Cap 16 R.E 2022] which after full trial the appellant was convicted and sentenced to serve thirty years imprisonment. Aggrieved by the decision, the applicant filed notice of intention to appeal and thereafter filed the petition of appeal pursuant to the order of Kalunde, J in Misc. Criminal Application no.3 of 2021.

During the hearing of the said appeal the republic raised a preliminary objection stated that the appeal was out of time barred, consequently, the same was struck out, hence this application.

When the matter came for mention on 17<sup>th</sup> January 2023, the parties were all in attendance. The applicant appeared in person while Mr. William Dustan, State Attorney appeared for the Respondent.

Submitting in support of the application, the applicant prayed the court to consider the application and grant the sought orders. He had nothing much to submit.

Mr. Dustan, learned State Attorney informed this court, the Republic does not oppose the application as the reasons advanced for extension of time are tenable in law.

By way of rejoinder, the applicant prayed the application to be granted as it is not opposed by the Republic.

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."*

There is no hard and fast rule in defining what it means by the term **"good cause"**, The power vested in the Court in extending time must be exercised judiciously; particularly, when determining "good cause" by considering circumstances of each case, In the case of **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd, Civil Application No. 13 of 2010**, (unreported), it was stated:

*"What constitutes good cause cannot be laid down by any hard and fast rules. The term **"good causes"** is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion. "[Emphasis added]"*

From above, the court has power to extend time to do any act where a party has failed to do it within a prescribed time. The said power is discretionary but has to be exercised judiciously. This means that, there must be tangible evidence proving existence of such fact that, the applicant was prevented by genuine reasons or there exist illegalities in the judgment, among others, through which the court can exercise its discretionary mandates to weigh on whether to grant extension or not.

In the present application the applicant stated that he had filed appeal before this court which was struck out for being incompetent. As such, he was unable to file a fresh appeal as it was already time barred, thence, the present application. Further, he stated that, to has shown diligence in handling the matter timely including filing the present application instantly after been struck out.

This court is satisfied that, the applicant has given sufficient reasons warranting grant of extension of time within which to file an appeal out of time. Further, the court has gathered no prejudicial to the Respondent, if the application will be granted.

Consequently, the application is hereby granted on condition that, the applicant file an appeal within **twenty-one (21) days** from the date of this order.

It is so ordered.

**Dated at Morogoro** this 17<sup>th</sup> January 2023.



  
G. P. MALATA

JUDGE

17/01/2023