

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**SONGEA SUB - REGISTRY**

**AT SONGEA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 000003807 OF 2024**

*(Originating from the District Court of Nyasa at Nyasa,  
Criminal Case No. 1 of 2023)*

**JEROME LAZARO MPOMBO.....APPLICANT**

**VERSUS**

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

**RULING**

Dated: 18<sup>th</sup> & 21<sup>st</sup> March, 2024

**KARAYEMAHA, J**

This Court was moved under section 361 (2) of the Criminal Procedure Act (Cap. 20 R.E. 2022) (hereinafter the CPA) to grant orders for:

1. Extension of time within which to lodge a notice of appeal and the appeal out of time.
2. Any other orders the court may deem fit and just to grant.

The application is brought by way of a chamber summons supported by an affidavit sworn by the applicant himself giving reasons why he delayed to take action.

Briefly, the applicant was an accused person in Criminal Case No. 1 of 2023. He was charged in the District Court of Nyasa at Nyasa for the offence of stealing contrary to sections 258(1) and 265 of the Penal Code [Cap 16 R.E. 2022] The trial Court having heard the prosecution and defence witnesses was satisfied that the prosecution proved the case beyond reasonable doubt. Consequently, the accused person was convicted and finally sentenced to 5 years imprisonment.

The applicant was aggrieved. In view of his averments, he lodged the notice and grounds of appeal in time but was struck out due to the fact that it was time barred. Therefore, he filed this application on 12/11/2023 seeking orders listed above. The respondent through Mr. Madundo Mhina, learned State Attorney, neither filed a counter affidavit nor contested the application.

When the application was called on for hearing, the applicant appeared in person and not represented while the respondent, the Republic was represented by Mr. Madundo Mhina, learned State Attorney.

Submitting in support of the application, the applicant simply reiterated the contents of the affidavit.

As indicated above, the respondent didn't contest the application. Mr. Mhina apart from punching holes in the applicant's application that it has



not explained sufficiently why the applicant delayed to file the notice of appeal and grounds of appeal to trigger this court to exercise its discretion, he implored this court use its discretion and grant his prayer.

Concisely, that was the submissions by parties. Before dealing with the substance of this application in light of the submissions from both sides, I find it pertinent to restate that although Court's power to extend time under section 361 (2) of the CPA is both broad and discretionary, it can only be exercised if good cause is shown. Even if it may not be possible to lay down an invariable definition of what a term good cause so as to guide the exercise of the Court's discretion in this regard, the Court must consider the merits or otherwise of the excuse tabled by the applicant for failing to meet the threshold of the limitation period prescribed for taking a required action. Apart from sounding explanation for the delay, Court of Appeal has invariably held that good cause would also depend on whether the application for extension of time has been brought promptly and whether there was diligence on the part of the applicant. See for instance, decisions in **Attorney General v. Oysterbay Villas Limited and another**, Civil Application No. 299/6 of 2016 in which the Court of Appeal followed its earlier decisions in **Dar es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987 both (unreported).

It is evident that the decision of the trial Court intended to be challenged via appeal process was handed down on 04/04/2023. In terms of section 361 (1) (a) of the CPA the appellant was legitimately expected to lodge a notice of appeal within 10 days from the date of the conviction and sentence and in terms of section 361 (1) (b) of the CPA, the intended petition of appeal was to be lodged within forty five days from the date of the delivery of the aforesaid judgment or sentence. But he delayed.

It is uncontested that there are no obvious reasons for the delay on the part of the applicant. I am pretty sure that he depended on the prison officers for help. This means the applicant is no way to blame. I, thus, find no laxity and negligence on the part of the applicant. In addition, I don't feel any degree of prejudice on the part of the respondent if the application is granted.

Consequently, and on the basis of the foregoing, I hold that the applicant is entitled to a grant of his prayers. Accordingly, I order the applicant to lodge a notice of appeal within 10 days and the intended appeal be filed within 30 days to from 21/3/2024 the date this application has been granted.

It is so ordered.

**Dated at SONGEA this 21<sup>st</sup> day of March, 2024**



A handwritten signature in blue ink, appearing to be "J. M. Karayemaha", is written above a horizontal line.

**J. M. Karayemaha**  
**JUDGE**