

IN THE HIGH COURT OF TANZANIA

DODOMA SUB - REGISTRY

AT DODOMA

**MISC. CRIMINAL APPLICATION NO. 9604 OF 2024**

*(Arising from Criminal Case No. 000005226 of 2024 in the District Court of Bahi)*

HABA LIGOHA MNEJE .....APPLICANT

VERSUS

THE REPUBLIC .....RESPONDENT

RULING

*9<sup>th</sup> & 14<sup>th</sup> May, 2024.*

**MUSOKWA. J.**

This is an application for extension of time to file notice of appeal and petition of appeal out of time against the decision of the District Court of Bahi in Criminal Case No. 000005226 of 2024. The application, which has been made under section 361 (2) of the Criminal Procedure Act Cap. 20 R.E. 2022, (CPA), contains the following prayers: -

- 1. That the honourable court be pleased to grant leave for the applicant to file notice of intention to appeal and petition of appeal out of time.*
- 2. That any other order(s)/relief this honourable court deems fit to grant.*

The chamber summons has been supported by the applicant's affidavit, sworn on 8<sup>th</sup> April, 2024. The applicant depones that he was convicted and sentenced to serve five (5) years imprisonment for the offence of

theft contrary to section 258 and 268(1) (3) of the Penal Code Cap. 16, R.E. 2022 (Penal Code). Notably, the records indicate that the said conviction and sentence were entered on 28<sup>th</sup> February 2024. Being aggrieved with the said decision, on the same date of judgment, the applicant expressed his intention to appeal to the prison officer in charge of Isanga Central Prison at Dodoma where he was incarcerated. The prison officer assured the applicant, that he will afford him the necessary assistance, whereby he facilitated the preparation of the notice of intention to appeal. The prison officer further assisted the applicant to obtain copies of the judgment and proceedings for the purpose of processing the appeal. The applicant further depones that immediately after preparing the notice of intention to appeal he submitted it to the prison authorities for further action. A few days after that, the Isanga prison authorities transferred him to Kongwa District Prison.

The applicant further depones that as a prisoner, he solely relies upon the prison administration office to facilitate all correspondences between him and the court. To that effect, the prison authorities assured him that the documents relating to his appeal will be filed in court timely. However, the documents were not filed within the time prescribed by law, the default being out of his control. For the foregoing reasons, the applicant

prayed this court to grant his application which will enable him to file the notice of intention to appeal and the petition of appeal out of time.

On 9<sup>th</sup> May 2024, when this application came before this court for mention, the applicant who was unrepresented, did not have much to submit. Ms. Victoria Njau, learned state attorney representing the Republic had no objection against the application, in consideration of the reasons for the delay as advanced by the applicant in his affidavit. Therefore, she conceded that the application be granted so that the applicant may file the notice of intention to appeal, and the corresponding petition of appeal.

It is the requirement of the law in criminal cases that an appeal by an individual person from any finding, sentence or order, be preceded by a notice of intention to appeal to be filed within ten (10) days of the decision of the court. In addition, the petition of appeal must be lodged within 45 days from the date of sentence as per section 361 (1) (a) (b) of the CPA.

However, this court has been conferred with discretion to extend time for an applicant to file the notice and petition of appeal where good cause is demonstrated. Section 361 (2) of the CPA reads as hereunder: -

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

In the instant application, the only issue for consideration is whether the applicant has shown good cause to warrant the grant of extension of time.

Under paragraphs 5, 6, 7 and 8 of the applicant's affidavit in support of this application, the applicant depones that the delay was outside his control as he duly submitted the notice of intention of appeal within time, believing that the prison officer in charge will forward the same to the court within the time prescribed by law. Further that, before the preparation of the petition of appeal, he was transferred to Kongwa Prison.

In ascertaining if sufficient cause has been established in order for extension of time to be granted or otherwise; each case must be determined on its own merits. In the case of **Halfani Mwishehe Mbega vs. The Republic, Criminal Application No. 26/01 of 2021**, at Dar es Salaam, the Court of Appeal of Tanzania (CAT), at page 6, held that: -

*"Guided by the above findings/ I find and I hold that the delay is excusable and it is having been satisfactorily explained. I have considered the circumstance of the case at hand that the **applicant being a prisoner, depends much on the prison authority to prepare and take care of the whole process of lodging matters in court. Intrinsicall½ the applicant cannot be blamed for lodging incompetent application as it may sometimes be unfair to expect too much from him. [emphasis added]***

In the case at hand, it has been stated in the applicant's affidavit that the applicant made all efforts to promptly file the notice of intention to appeal within the time prescribed by the law at Isanga prison office before he was transferred to Kongwa prison. Certainly, the efforts undertaken by the applicant were in line with section 363 of the CPA which states that:

*"Where the appellant is in prison **he may present his petition of appeal** and the copies accompanying the same **to the officer in charge of the prison**, who shall thereupon forward the petition and copies to the Registrar of the High Court." [emphasis added]*

Accordingly, it is evident that the delay was beyond the applicant's control, in consideration of his status as a prisoner. For the reasons stated herein above, I find merit in this application. The application is hereby granted. The applicant to file the notice of intention to appeal and the petition of appeal within 10 days and 45 days respectively from the date of delivery of this ruling.

It is so ordered.

**DATED at DODOMA** this 14<sup>th</sup> day of May, 2024.



A handwritten signature in black ink, appearing to read "I.D. Musokwa".

**I.D. MUSOKWA**  
**JUDGE**

Ruling delivered in the presence of the applicant and in the presence of  
Ms. Victoria Njau, state attorney representing the respondent.



A handwritten signature in black ink, appearing to read "I.D. Musokwa".

**I.D. MUSOKWA**

**JUDGE**