

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF MANYARA
AT BABATI**

MISC. CRIMINAL APPLICATION No. 236 OF 2024

(Originating from Resident Magistrates' Court of Manyara at Babati
in Criminal Case No. 7 of 2021)

MANDE KIDUMA.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

15th April & 13th May, 2024

D. C. KAMUZORA, J.

The applicant brought this application under section 10 of the Appellate Jurisdiction Act [CAP 141 RE 2019] (AJA) and section 361(1)(2) of the Criminal Procedure Act [CAP 20 RE 2022] (the CPA), seeking for extension of time to file notice of appeal and appeal out of time. The application is supported by an affidavit sworn by the applicant himself and the respondent filed counter affidavit to contest the application.

Brief facts as gathered from the record is that, the applicant was arraigned before the Resident Magistrate's court of Manyara and charged for unnatural offence contrary to section 154(1)(a) and (2) of the Penal

Code [CAP 16 R.E 2022]. He was convicted and sentenced to life imprisonment. He was aggrieved by the decision and lodged Criminal Appeal No. 10 of 2020 before this court but the same was dismissed for being out of time. Still intending to fight for his freedom, the applicant preferred the instant application seeking for leave to lodge a notice of intention to appeal and an appeal out of time.

When the matter was called for hearing, the applicant appeared in person while Ms. Leah Viosena, learned State Attorney appeared representing the respondent.

When called to argue his application, the applicant submitted that the delay in filing his appeal was beyond his control. That, when he was sent to prison, he notified the prison officer of his intention to appeal and was made to sign a notice of intention to appeal to this court. That, he also requested for copy of judgment but the same was supplied to him after 30 days. That he asked the prison officer to assist him in preparing his appeal and one Mackenzie was assigned to assist him. That, he successfully filed an appeal to this court but the same was dismissed for being time barred. That, he preferred an appeal to the Court of Appeal but they directed him to file an application before this court hence, the current application for extension of time. He therefore urged this court to grant

the application by extending time for him to lodge notice of appeal and the appeal against the decision of the lower court.

In reply, the learned State Attorney submitted that the applicant the applicant has not accounted for each day of the delay. She referred the decision in the case of **Benjamin Amos Vs. Republic**, Criminal Application No. 106 of 2018 (unreported). The learned State Attorney submitted further that being in prison is not a good reason for extension of time. Reference was made to the case of **Isack Kapesa Vs. Republic**, Misc. Criminal Application No. 10 of 2022 (unreported). She therefore urged the court to dismiss the application for want of merit.

This court has powers to grant extension of time to lodge an appeal under section 361 (2) of the CPA. The said provision reads;

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

The above provision insists on good cause being shown for the applicant to succeed in an application for extension of time like the present one. What constitutes to good cause is not defined under the law, see, the case of **Benedict Mumello Vs. Bank of Tanzania** [2006] 1 EA 227, the Court of Appeal subscribed to its decision in **Tanga Cement Company Limited v. Jumanne D. Masangwa & another**, Civil

Application No. 6 of 2001 (unreported) where it was stated that what amounts to sufficient cause has not been defined.

However, good cause has been defined in different cases by this court and the Court of Appeal. In the case **Benjamin Amon Vs. Republic**, Tanzlii, [2020] TZCA 335, the Court of Appeal of Tanzania listed factors for consideration in establishing good cause for extension of time;

- i. The applicant must account for each day of the delay.*
- ii. The delay must not be inordinate.*
- iii. The applicant must show diligence and not apathy, negligence or sloppiness of action that he intends to take.*
- iv. If the court feels that there are other sufficient reasons such existence of point of law of sufficient importance, such as illegality of the decision sought to be challenged.*

Guided by the above factors, I took trouble to assess the record if the applicant herein successfully demonstrated good cause to the satisfaction of this court for it to extend time. I have gone through the affidavit in support of application and parties' rival submissions. From his affidavit, the applicant deponed that the delay was beyond his control because, being a prisoner, he was not aware of the procedures he had to follow for him to challenge the lower court's decision. That, immediately

after his conviction and sentence, he was transferred to Arusha central prison and it became hard for him to channel his appeal while at Arusha prison leading to the delay in filing his appeal.

Subject to the provision of section 361 (1) of the CPA, notice of appeal must be lodged within 10 days from the date of impugned decision or order and an appeal to this court must be filed within 45 days counted from the date the aggrieved party was supplied with necessary documents. The said provision read: -

361.-(1) Subject to subsection (2), no appeal from any finding, sentence or order referred to in section 359 shall be entertained unless the appellant-

(a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and

(b) has lodged his petition of appeal within forty five days from the date of the finding, sentence or order, save that in computing the period of forty five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded.

It is in record that, after being convicted by the lower court on 18/07/2022, the applicant duly lodged his notice of appeal on time on 19/07/2022. In his petition of appeal, he indicated that he was supplied

with copies of judgment and proceedings on 20/09/2022. Copies in court records does not indicate the date they were certified and supplied to the applicant thus, this court will consider the applicant's records showing that he was supplied with copies on 20/09/2022. Being guided by section 361 (1)(b), 45 days is counted from 20/09/2022 when the applicant was supplied with copies of the judgment and proceedings. Counting 45 days from that date, the last date for appeal before this court was 03/11/2022 but an appeal to this court was lodged on 29/11/2022 counting for 26 days delay, see record in Criminal Appeal No. 10 of 2022.

It was observed that, after the applicant lodged Criminal appeal No. 10 of 2022, he was consistent in making follow up of his case. After the ruling in the above appeal was delivered on 15/2/2023 dismissing the appeal for being time barred, the applicant immediately preferred another application to the court of Appeal of Tanzania vide, Criminal Appeal No. 9/02 of 2023. He then lodged this application on 19th January, 2024 and withdrew the application before the Court of Appeal on 13th February 2024.

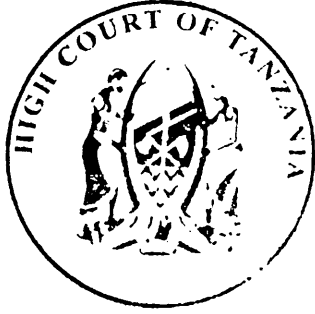
It was argued by the learned state attorney that, the applicant was unable to account for the delay. The need to account for the period of delay has been emphasized in numerous decisions. See, **Dar es Salaam City Council Vs. Jayantilal P. Rajani**, Civil Application No. 27 of 1987;

Kalunga & Company Advocates Ltd Vs. National Bank of Commerce Ltd [2006] TLR 235, **Elia Anderson Vs. Republic**, Criminal Application No. 2 of 2013 and **Attorney General Vs. Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016 to mention but a few.

From the above captured record, I find that the applicant accounted for the delay. He claimed that his appeal's effort was disturbed not only because he was in prison but because of his transfer to Arusha central prison in which it became difficult for him to channel his appeal to Manyara. That fact was uncontested by the respondent's counsel and bearing in mind the time spent before taking action which is 26 days, it justifies that such transfer disturbed the applicant's effort but he never acted negligently. The delay in my view, was not inordinate for anyone to conclude that the applicant was negligent in pursuing his right.

In the circumstance, I find that the applicant demonstrated good cause for the delay to the satisfaction of this case. I therefore find merit in this application and grant 14 days for the applicant to lodge an appeal before this court since notice of intention to appeal was filed in time. The 14 days period shall be counted from the date of this ruling. In short, the application is hereby granted.

DATED at **BABATI** this 13th Day of May, 2024.




D. C. KAMUZORA

JUDGE