

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IRINGA SUB-REGISTRY)

AT IRINGA

MISC. CRIMINAL APPLICATION NO. 11920 OF 2024

(Arising from the District Court of Ludewa in Criminal Case No.31 of 2022)

DAUDI DAVID MLIGO.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of last Order 28/5/2024

Date of Ruling: 29/5/2024

LALTAIKA, J.

The applicant, **DALALI MINZE SENGELEMA**, is seeking extension of time within which to file a Notice of Intention to Appeal and a Petition of Appeal out of time. The applicant is moving this court under section 361(2) of the Criminal Procedure Act [Cap. 20 R.E. 2022]. This application is supported by an affidavit sworn by the applicant on 6/5/2024. It is noteworthy that this application has not been resisted by a counter affidavit of the respondent.

During the hearing, the applicant appeared in person, unrepresented while Mr. **Alfred Stephano Maige**, learned State Attorney, appeared for the respondent. The applicant submitted that he knew that he was serving a 30-year imprisonment term for the offence of Rape contrary to section 131(1) of the Penal Code and that he was sentenced on the 18th day of May 2022. He proceeded to inform that he indicated his dissatisfaction with conviction and sentence and that he believed that the prison authorities had lodged the said Notice of Intention to appeal on his behalf.

However, the appellant averred, in September 2023 when he wanted to know the status of his appeal, he was informed by prison authorities at Ludewa that his Notice had never been sent to the Court in the first place. He prayed that this court looked at his application favourably because he was not in possession of his freedom and there was little, he could do to speed up the process.

In response, Mr. Maige submitted that in essence, the Respondent had no objection that is why by the time of hearing the application, no copy of counter affidavit had been filed. Nevertheless, the learned State Attorney cautioned that it would have been proper for the applicant to support his averments with concrete evidence.

Having gone through the application and submission of both the learned State Attorney, I am inclined to decide on the merit or otherwise of the application. In the instant application the main reasons for the delay are featured under paragraphs 6, 7 and 8 of the sworn affidavit as well as the applicant's brief oral submission. The total sum is to the effect that the appellant's freedom was curtailed and he depended on the prison authorities who also had other equally pressing activities to attend.

In view of the above reasons, it is apparent that the delay was caused by factors beyond the ability of the applicant to control and cannot be blamed on him.

The next issue I am called upon to resolve is whether or not the reasons advanced by the applicant amount to good cause. Our law does not define what amount to good/sufficient cause. However, in the case of **Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007(unreported) it was held:-

"Sufficient reasons cannot be laid down by any hard and fast rule. This must be determined in reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time."

As to the matter at hand, I can safely say that the applicant has advanced good cause for his delay to lodge his Petition of Appeal out of time. Indeed the chain of events explained in the applicant's affidavit leave me convinced that the applicant has not only advanced good cause but also exhibited great diligence in pursuing his appeal. He has not displayed any apathy, negligence, or sloppiness in the prosecution he intends to take as was emphasized in the case of **Lyamuya Construction Co. Ltd. vs. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No 2 of 2020 [2011] TZCA4.

For the foregoing reasons, I find and hold that the applicant has advanced sufficient reasons for the delay to warrant this court to exercise its discretion to grant the enlargement sought.

In the upshot, this application is granted. The applicant is hereby granted ten (10) days to lodge his Notice of Intention to Appeal and forty-five (45) days to lodge a Petition of Appeal effective from the date of this ruling.

It is so ordered.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
29/05/2024**

Court: This ruling is delivered under my hand and the seal of this court on this 29th day of May 2024 in the presence of **Ms. Muzzna Mfinanga**, learned State Attorney for the Respondent and the applicant who has appeared in person, unrepresented.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
29/05/2024**