

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

MOROGORO SUB - REGISTRY

AT MOROGORO

MISC. CRIMINAL APPLICATION NO. 71 OF 2023

*(Originating from Criminal Case no. 36 of 2021 in the Resident Magistrate Court of
Morogoro at Morogoro)*

MAXSON JOHN @ MACK.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

MRUMA, J;

The applicant Maxson John @ Mack filed this application under section 361(2) of the Penal code, praying for the orders that, it be pleased to grant extension of time within which to file notice of intention to appeal and appeal out of time.

Briefly the applicant was charged with the offence of Armed Robbery contrary to section 287 A of the Penal Code Cap 16 RE 2019. The applicant was convicted and sentenced to serve thirty (30) years imprisonment, that was on 10th day of May 2022.

Aggrieved thereof the applicant issued a notice of intention to appeal on the same day he entered the prison. He was supplied with the copy of judgement and proceedings through the prison authority 08th day of June 2022 so as to prepare the petition of appeal, he prepared the petition of appeal and he filed the petition of appeal on 12th day of July 2022, before Hon. Chaba, J who struck out the appeal for being preferred out of time. As such, he decided to apply for extension of time within which to file notice of appeal and appeal out of time, hence, the present application.

The learned state attorney did not oppose the application on the ground that the applicant has demonstrated good cause for delay thus deserve to be granted extension of time.

I have considered the submission by the learned state attorney supporting this application. To start with, for extension of time to be granted the applicant must advance good cause for the delay. Section 361 (2) of the Penal code provides that;

"The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has lapsed."

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 Criminal Procedure Act 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 an appeal or not, the sole determinant factor is whether or not the applicant has established good cause for the delay."

From the above, the court has power to extend time to do any act where a party failed to do it within 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 facts, the applicant was prevented by genuine reasons.

In the case of this nature the duty of the court is to assess if the reasons given amount to good cause for delay and whether the same was beyond the applicant's control. Additionally, it has to consider the governing principles in granting or not application of this nature.

The applicant's duty to give notice of intention to appeal within ten days through the prison officer was discharged accordingly. Therefore, no blame lies on the applicant's shoulder. He prepared his appeal and filed the same in court however he was caught in the web of limitation.

All the appeal documents by the appellant are submitted to and from the court through the Prison Officer in charge and he is the one who bears a duty of transmitting them to court. And for that reason, it was not in the applicant's position to make sure that everything is done timely. This is echoed by the court of appeal decision in the case of **Nzeyimana Zeno vs. Republic**, Criminal Appeal no. 54 of 2007 (unreported) where it was held that;

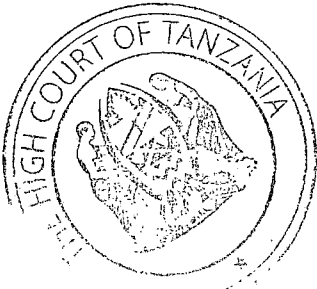
*We have also taken note of the fact that since giving notice of intention to appeal on his first day in prison, the appellant's situation has remained in limbo, largely through the frequent prison transfer he was subjected to. **The notice has expired, and the time within which to appeal has also lapsed the interests of justice calls for remedial measures in this unhealthy situation. [Emphasis added]***

The applicant being a prisoner he was under no position to make proper follow up of his case, from the process of obtaining the copy of proceedings and judgement up to the time of filing his appeal. Therefore, the applicant failure to file his appeal within time was not caused by his dilatory conduct, and thus good cause is shown to this court to grant him extension of time to file notice of appeal and appeal out of time.

All said and done the applicant is given fifteen (15) working days from the day of this ruling within which to file his appeal.

It is so ordered.

Dated at Morogoro this 19th February 2024.




A.R. MRUMA

JUDGE

19/02/2024