

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
DAR ES SALAAM SUB-REGISTRY  
AT DAR ES SALAAM**

**CRIMINAL APPLICATION NO 14433 OF 2024**

**CASE REF NUMBER 202405282000014433**

(Arising from Criminal Case no. 39239/2023 the District Court of Kibaha dated 9th April 2024)

**RASHID ALLY MSESE.....APPLICANT**

*VERSUS*

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

**RULING:**

**26<sup>th</sup> & 28th June 2024**

**KIREKIANO J**

On 25<sup>th</sup> January 2024, the Chief Justice issued The High Court Registries (Amendment) Rules, 2024, Government Notice No. 61A, published on 29/01/2024, which came into force on the 30th Day of January 2024. The same is read together with the High Court Registries with effect on the 30th day of January 2024. To the effect that, **One**, the High Court Main Registry will be in Dodoma; **two**, all other high court registries formally known as "District Registry" shall be known as "Sub Registry."

On 22<sup>nd</sup> May 2024, the applicant, through his advocate, Miss Rose Jeremiah Sanga, submitted a petition of appeal, intending to challenge the judgment and sentence against him meted by the District Court of Kibaha on 9th April 2024 in Criminal Case No. 39239 of 2023.

His petition of appeal was titled, "High Court of the United Republic of Tanzania **Dar es Salaam District Registry**". Considering the amendment, the Deputy Registrar directed the appellant to rectify his petition of appeal to read, "**Dar es Salaam Sub Registry**". It appears that the appellant did not anticipate the return or rejection of his petition; when the follow-up was made, the appellant learnt that the appeal was returned. He could not resubmit the same upon rectification since he had already been out of time for three days.

In this application, the applicant, under Section 361 (2) of the Criminal Procedure Act, [Cap 20 R.E 2022], prays for an order to extend the time within which he can file his petition of appeal. The application is supported by an affidavit of Miss Rose Jeremiah Sanga, significantly in paragraphs four and five, stating facts on the submission and return of the petition as indicated above as grounds of delay.

When the application came for hearing, advocate Rose Sanga represented the applicant, while Miss Elizabeth Ulomi, a learned state attorney, represented the respondent and did not contest the application. Miss Sanga submitted that the appeal was filed on time on 22<sup>nd</sup> May 2024. However, on the same date, her uncle died, so she had to travel to Makete for the burial ceremony. After returning on 26<sup>th</sup> May 2024, she noticed that

the appeal was rejected (sic) for being filed in the wrong Registry. She beseeched this court to allow this application, arguing that the time of delay was spent in a court having missed the point on the cited GN, but also asked this court to consider the four days of delay was caused by her failure to access the case management system in time to comply with the deputy registrar directive.

On my part, I have considered this Court's powers under Section 361 (2) of the Criminal Procedure Act; this Court may, for a good cause, admit an appeal notwithstanding the period of limitation has elapsed. What is important here is that the discretion in considering good cause must be exercised judiciously. **Jumane Hassan Bilingi v The Republic, Civil Application No. 23 of 2013 (unreported)** but also **Kibaha Housing Cooperative Society Limited (KIHOCOSO) vs Judith Yoas & Others (Civil Application No. 343/17 of 2021) [2023] TZCA 17836 (16 November 2023)**. In the latter case the court of appeal in its instructive ruling held at pg 6 thus;

*As a matter of general principle, it is at the discretion of the Court to grant an extension of time. But that discretion is judicial, so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily.*

Having read the applicant's affidavit and the submission by Miss Sanga, considering the circumstances causing the delay and the four-day period, I see nothing sloppy or deliberate on the applicant's part to pursue his appeal. I am persuaded to rise in the interest of justice and exercise my discretion to find that the applicant has shown good cause in support of the application.

In the end, the application is granted, and the applicant is given 14 days from the date of this ruling to file his petition of appeal.



**A J. KIREKIANO**

**JUDGE**

**28.06.2024**

**COURT:**

Ruling delivered in the presence of the applicant and Miss Rose Jeremiah Sanga, Advocate for the Applicant, and in the absence of the respondent

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the left.

**A J. KIREKIANO**

**JUDGE**

**28.06.2024**