

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

MISC. CRIMINAL APPLICATION NO. 28 OF 2023

(Arising from the District Court of Siha at Siha in Criminal Case No. 114 of 2022)

ERNEST KIDABITI NONGA..... APPLICANT

Versus

THE REPUBLIC.....RESPONDENT

RULING

5th March, 2024

A.P. KILIMI, J.:

The applicant hereinabove is seeking for leave of this court to appeal out of time. The application has been preferred by way of Chamber Summons pursuant to section 361 (1) (b) and 2 of the Criminal Procedure Act, Cap 20 R.E 2019 (hereinafter 'CPA') and any other enabling provision of the law. The application is supported by his affidavit wherein averrers the reasons for the application to be granted. The respondent being

represented Ms. Imelda Mushi by did not file counter affidavit but on the day set for hearing prayed to argue orally.

Today when the application came before me for hearing the applicant prayed to adopt his affidavit and said those were the reasons for his application then prayed for the same to be granted. The respondent on the other hand represented by Ms. Imelda Mushi, learned state attorney had no objection towards the application.

Convincing this Court to grant the application in his affidavit the applicant explained that he is a prisoner at Karanga Central Prison Moshi and that after he was sentenced to jail, he timely lodged his notice of intention to appeal and the prison authorities consulted the convicting court to furnish him with the copies of judgment and proceedings. He contended further that the trial court delayed to supply him with the requested documents hence he was forced to make the present application as he was already out of time.

I have considered the reasons as adduced by the applicant in his affidavit, the issue before me is whether the applicant has established good cause to enable his application be granted.

I am mindful, what constitutes good cause depends on the circumstances of each case. In **Osward Masatu Mwaizarubi vs Tanzania Fish Processing Ltd, Civil Application No.13 of 2010**, the Court had this to say:

*"...what constitutes good cause cannot be laid down by any hard and fast rules. The term **"good causes"** is a relative one and **is dependent upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion...**"*

[Emphasis added].

I have considered the fact that the applicant is a prisoner who readily filed a notice of appeal in time, in my view this shows the intention he had since he received his judgment. Therefore, the fact that he was in prison, obvious circumstance does not favour him to make constant follow-ups on the copies of judgment except to wait until it reaches him in prison. In that regard I am settled he could have done nothing without the said copies of judgment, and this irresistibly amount to good cause.

For the foregoing, I find the above is enough for me to invoke discretionary power of this court and grant the application sought accordingly. Consequently, the applicant is ordered to file his appeal within thirty days (30) from this day of Ruling

It so ordered.

DATED at **MOSHI** this day of 5th March, 2024.



A. P. KILIMI
JUDGE

Court: Ruling delivered today on 5th day of March, 2024 in the presence of Ms. Imelda Mushi learned State Attorney and Applicant present.

Sgd: A. P. KILIMI
JUDGE
5/03/2024