

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[MOROGORO SUB-REGISTRY]
AT MOROGORO**

CRIMINAL APPLICATION NO. 73 OF 2023

(Arising from the decision of Kilombero District Court in Criminal Case No. 273/2020)

MASUDI ADINANI MBUGULI.....APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

27/02/2024

KINYAKA, J.:

On 3rd August 2020, the applicant Masudi Adinani Mbuguli was convicted by the District Court of Kilombero following his own plea of guilty to two counts under the Penal Code Cap 16 R.E 2019. The first count being Conspiracy to commit an offence contrary to Section 384 and the other was Armed Robbery contrary to section 287A.

In pursuit of his right to appeal to this court against the said decision, on 26th October 2023, the applicant preferred the instant application by way of chamber summons predicated under section 363 and 392A of the Criminal Procedure Act Cap 20 R.E 2019 and section 14(1) of the Law of Limitation Act Cap 89 R.E 2019 and any other enabling position of the law, beckoning upon this court to extend time within which he can file the intended appeal

out of time. The application was accompanied with the affidavit in support of the application deposed by the applicant.

Lucky the applicant is, the learned state counsel for the Respondent opted not to resist the application at hand, hence he didn't file his counter affidavit against the same.

At the hearing of the application, the applicant appeared in person and unrepresented, while, Mr. Shaban Kabelwa, learned state Attorney entered appearance on behalf of the Republic.

Upon being afforded with the opportunity to address the court first, Mr. Kabelwa informed the court that he does not object to the application on a ground that the reasons for extension of time as gathered from the applicant's affidavit are meritorious. On his part, the applicant prayed for the reasons stated in his affidavit in support of the present application for leave to appeal out of time, be accepted so that he can lodge his appeal.

Although the application stood unopposed, I find myself duty bound to determine the same on merits. Upon carefully scanning through the applicant's affidavit as well as the submissions by both the learned State Attorney and the Applicant, the sole issue for determination is whether the



applicant has adduced sufficient reasons to warrant this court to grant the orders sought in the chamber summons.

Before embarking into the merits of the application, I wish to restate a settled principle of law governing the application of this nature as provided for under section 361 (2) of the Criminal Procedure Cap 20 R.E 2019, an order to extend time depends on the court's discretion whether to grant it or not upon good cause being shown. Section 361 (2) reads;

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

In the **case of Lyamuya Construction Co. Ltd v. Board of Registered of Young Women's Christian Association of Tanzania, Civil Application No 2 of 2010** (unreported) on page 6, the Court of Appeal amplified on the what to be taken into account in exercising such powers and held:

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

According to the applicant's affidavit in paragraph 3 and 6, the reasons for his failure to appeal within time was first, the delay to be availed with copies

of judgment and secondly a limited access to legal representation. I must at onset state that as for me, the reasons deponed by the Applicant are sufficient under the circumstances of the present case. I am of a considered view that being detained as a prisoner, the applicant's processing of the appeal was at the mercies of the prisons authority who were duty bound to assist him obtaining the copies of judgment and legal services on time. All that said, and considering the fact that the application was conceded by the respondent, I find it in the interest of justice to grant the applicant an order for extension of time to lodge his intended appeal in this court.

I have been inspired by the holding of this court in the case of **Rajabu Rashid Halifa v. The Republic, Misc. Criminal Application No. 7 of 2023** (unreported), HCT on page 6, where, upon considering that the applicant was an inmate who may be affected by reasons beyond his control, the court being inspired by the holding of the Court of Appeal in the case of **Otieno Obute vs. R, MZA Criminal Application No. 1 of 2011** (unreported) had this to say;

"I have further considered the fact that the applicant is a prisoner detained in the prison. He thus, relies on the prison authority to process his appeal. In the circumstances, the applicant might

have been affected by the reasons beyond his control. This stance was taken in the case of Otieno Obute vs. R, MZA Criminal Application No. 1 of 2011 (unreported) when the Court of Appeal held:

"We have considered the averments by both parties and come to the conclusion that this application has merit.....As a prisoner, his rights and responsibilities are restricted. Therefore, he did what he could do. He may have been let down by reasons beyond his means.....accordingly, the application is granted,"

From the foregoing, I hold that the applicant has advanced sufficient reasons to move this Court exercise its discretionary powers to enlarge time for the applicant to assail the decision of the District Court of Kilombero in Criminal Case No 273 of 2020. In the upshot, I allow the application and the applicant is hereby given thirty (30) days to lodge his appeal reckoning from the date of this ruling.

It is so ordered.

DATED at MOROGORO this 27th day of February 2024.


H. A. KINYAKA

JUDGE

27/02/2024

