

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB REGISTRY OF MANYARA**

**AT BABATI**

**MISC. CRIMINAL APPLICATION NO. 47 OF 2023**

*(Originating from Criminal Case No. 180 of 2022 in the District Court of Babati at Babati)*

**ABDALLAH MOHAMED.....APPLICANT**

**VERSUS**

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

**RULING**

*7<sup>th</sup> February & 7<sup>th</sup> March 2024*

***Kahyoza, J.:***

**Abdallah Mohamed** is seeking for indulgence of this court to extend time within which to lodge an appeal out of time. The respondent opposed the application on the ground that the applicant did not disclose sufficient reason to warrant this court to extend time.

A brief background is that; **Abdallah Mohamed** appeared before District Court charged with an offence of Gang Rape. On 20.04.2023, the District Court convicted him and sentenced him to Life imprisonment. He lodged a notice of appeal on 27.04.2023 through the officer in-charge Babati District Prison. This application was filed and admitted online on 11/10/2023.

The applicant's grounds for extension of time, is that he is under prison custody so failed to get proper legal advice on time, on how to make an appeal. The same is reflected on item(s) 2 and 3 of the supporting affidavit. When expounding the same, he orally submitted that, after he was sentenced he was transferred to Arusha Prison.

The respondent's State Attorney, Ms. Rose Kayumbo prayed for the adoption of her counter affidavit and submitted orally that the applicant had not adduced sufficient reasons for delay. She contended that the applicant was not diligent enough, he did not intend to appeal. She asserted that ignorance of law is not a ground for extension of time, citing the rule in **Godfrey Mahona vrs. The Republic** [2023] TZCA 16688. She was emphatic that criminal appeals are cost free. Also that the applicant failed to account on the delay from the time he was convicted. To support her contention, she cited the case of **Benjamin Amon vrs. R**, Criminal Application No. 106 of 2018 tanzlii [2020] TZCA 335 at page 6. That the applicant failed to disclose who helped him to prepare documents in instituting this application, thus, prayed this court to dismiss this application.

In his rejoinder, the applicant was emphatic for this court to grant his application.

## **Has the applicant adduced sufficient reason for delay?**

It is settled, as it was held in the case of **Benjamin Amon vrs. R**

(supra) that: -

*"In exercising its discretion of whether or not to grant extension of time the court is required to consider the following factors which may not be exhaustive, but at the moment they include, that-*

- a) That applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*
- c) The applicant must show diligence, and not apathy, negligence or sloppiness of the action that he intends to take; and*
- d) If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged."* (Emphasis added)**

Section 361(1) & (2) of **the Criminal Procedure Act**, [Cap. 20 R.E. 2022]

(The CPA) reads as follows;

*"361(1) Subject to subsection (2) no appeal from any finding, sentence or order referred to in section 359 shall be entertained unless the appellant-*

- (a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or***

*order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and*

*(b) has lodged his petition of appeal within forty five days from the date of the finding, sentence or order,*

*save that in computing the period of forty five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded.*

*(2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.” (Emphasis added)*

From the aforementioned legal position, and based on the fact that the applicant received copies of judgment and proceedings on 15.05.2023, it is obvious that the applicant failed to appeal on time, as the due date was 29.06.2023 and as rightly argued by Ms. Rose, ignorance of the law is not sufficient reasons from which this court can extend time. And the period of delay is 105 days.

It is evident on the record, that the applicant was convicted and sentenced by the trial court on 20.04.2023 and on 27.04.2023 he filed a notice of appeal. He is incarcerated.

In several occasions, the Court of Appeal of Tanzania has treated applications of extension of time from inmates with care. In the case of



**Renatus Muhanje vrs. R.** (Criminal Appeal 417 of 2016) 2019 TZCA 103 (10 May 2019) which cited in approval, the case of **Sospeter Lunenga v. R.**, Criminal Appeal No.108 of 2006 and **Nduruwe Hassan v. R.**, Criminal Appeal No. 70 of 2004 (Both unreported) it was observed that-

*"With respect, the Court has occasionally treated with extreme care applications for enlargement of time within which to lodge notices of intention to appeal from inmates."*

It is from these authorities and the rule in **Benjamin Amon vrs. R.**, I find refuge, and I feel compelled by the fact that the applicant was prompt to file his notice on intention to appeal, that the period of delay was 105 days, and that his movements were curtailed as an inmate, to find that the applicant deserves an intervention of this court.

Going by the trial record (particularly, the impugned judgment) to reach to a stance that there is a point of law of sufficient importance warranting an extension of time by this court under section 361 (2) of the CPA, within which the applicant to file an appeal.

I had a cursory review of impugned judgment, particularly at page 10, 11 and 12 of the impugned judgment, it is obvious that the same needs to be addressed by this court, to see to it, as to whether the trial court's

conviction and the sentence so meted, were legally justified and the same can be realized in an event that this court allows the applicant to appeal out of time.

In the circumstances, I extend the time within which to file an appeal. The applicant is given 30 days from the date of this ruling to file his appeal to this court if he so wishes.

It is so ordered.

Dated at Babati this **7<sup>th</sup>** day of **March**, 2023.



A handwritten signature in black ink, appearing to read 'J. R. Kahyoza', written over a horizontal line.

**J. R. Kahyoza**  
**Judge**

**Court:** Ruling delivered in the presence of the applicant and Ms. B. Moshasha SA, for the respondent. Fatina Haymale (RMA) present.

A handwritten signature in black ink, appearing to read 'J. R. Kahyoza', written over a horizontal line.

**J. R. Kahyoza**  
**Judge**

**07/03/2024**