

**IN HIGH THE COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISCELLANEOUS CRIMINAL APPLICATION NO.9 OF 2022**

*(Originating from District Court of Liwale at Liwale in Criminal Case  
No.48 of 2019)*

**SAIDI ABDALLAH KAMBAKU..... APPLICANT**

***VERSUS***

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

**RULING**

*Date of Last Order: 24/2/2022*

*Date of Ruling: 28/2/2022*

**LALTAIKA, J.**

The applicant **SAIDI ABDALLAH KAMBAKU** is seeking move this court, under Section 361 (1) and (2) of the Criminal Procedure Act, [Cap. 20 R.E. 2019], to grant him an extension of time within which to file a notice of appeal and to appeal out of time. The application is supported by an affidavit affirmed by the applicant on 11/02/2021. The respondent, on her part, has not filed a counter affidavit to resist the application.

During the hearing, the applicant appeared in person and fended for himself whereas Ms. Faraja George, learned Senior State Attorney appeared for the respondent.

The applicant appeared to be rather brief. He prayed that his affidavit be adopted and form part of his submission. He also prayed this court to look into possibilities of releasing him from jail. In reply, Ms. George, learned Senior State Attorney did not oppose the application revealing absence of counter affidavit signified that the republic had no objection. In a rejoinder, the applicant reiterated his prayer and insisted his application be granted.

It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse and that, extension of time may only be granted where it has been sufficiently established that the delay occasioned has been accounted for with sufficient and/or good cause.

In the instant application, the reason for the delay as relied for by the applicant are featured under paragraph 2,3,4 and 5 of his affirmed affidavit. A quick read through the cited paragraphs reveals such reasons as: **one**, failure by prison officers to liaise and file the notice of appeal and the petition of appeal of the applicant even though they had assured him that filing of the same would undertake. **Two**, the applicant was transferred from Liwale Prison to Lindi Prison.

I am convinced that, these two reasons made the applicant unable to follow up on his notice of intention to appeal and obtain necessary

documents for his intended appeal to this court. Being prisoner whose freedom to communicate directly with the registry of this court had been curtailed, he naturally had no means of proving that his notice was filed by the prisoner officers as promised. Needless to explain even further that the transfer from one Prison to the next only made matters worse as the applicant was not in the position to interact with the officers that had hitherto agreed to file his documents. Are these reasons sufficient/good cause to move this court to grant the application? I now turn to addressing this question which is the crux of this application.

Our law does not define what amounts to good cause. However, in the case of **Regional Manager, Tanroads Kagera vs. RUAHA Concrete Company Ltd.** Civil Application No. 90F 2007 (Unreported) it was held that;

*"Sufficient reasons cannot be laid down by any hard and fast rule. This must be determinedly reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time."*

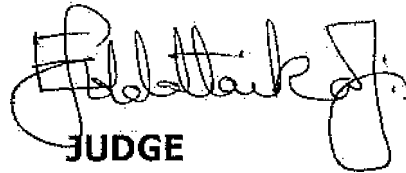
I am convinced that the applicant has advanced good cause to move this court to grant his prayer. The chain of event explained in the

applicant's affidavit shows that in spite of inability to follow up his case due to circumstances beyond his control as a prisoner, he has not given up. I hold that the applicant has explained sufficient reasons for delay to warrant this court to exercise its discretion to grant extension of time sought. The prayer is granted.

The applicant is hereby given ten (10) days to lodge his notice of intention to appeal and to file his appeal within forty-five (45) effective from the date of this ruling.

It is so ordered.

**E. I. LALTAIKA**

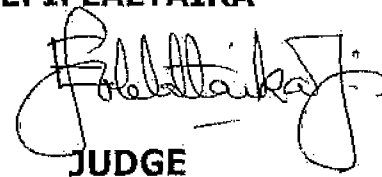


**JUDGE**

**28.02.2022**

This ruling is delivered under my hand and the seal of this Court on this 28<sup>th</sup> day of February, 2022 in the presence of Ms. Faraja George, learned Senior State Attorney and the applicant who has appeared in person, unrepresented.

**E. I. LALTAIKA**



**JUDGE**

**28.02.2022**