

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
MISCELLANEOUS CRIMINAL APPLICATION NO. 68 OF 2022
(Originating from the District Court of Mbozi at Vwawa,
Criminal Case No. 142 of 2019)**

FURAHA PETER KIBONA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

R U L I N G

Dated: 20th February, 2023

KARAYEMAHA, J

This Court is moved under section 361 of the Criminal Procedure Act (Cap. 20 R.E. 2019) (hereinafter the CPA) to grant orders for:

1. Extension of time within which to lodge a notice of appeal and appeal out of time.
2. Any other orders the court may deem fit and just to grant.

The application is brought by way of a chamber summons supported by an affidavit sworn by the applicant giving reasons why he delayed to take action.

Essentially, the applicant was an accused person in Criminal Case No. 142 of 2018. He was charged in the District Court of Mbozi at Vwawa with

the offence of Burglary contrary to section 294 (1) (a) (b) and (2) of the Penal Code [Cap 16 R.E. 2019] (now 2022). Upon conviction, he was sentenced to 20 years imprisonment.

The applicant was aggrieved but could not lodge the notice of appeal and petition of appeal within the prescribed time. Therefore, he filed this application on 11th October, 2022 seeking orders listed above. The respondent neither filed a counter affidavit nor contested the application.

When the application was called on for hearing, the applicant fended for himself whereas the respondent, the Republic, was represented by Mr. Lordgud Eliaman, learned State Attorney.

On my part, having examined and reviewed the affidavit, I have noted that the decision of the trial Court intended to be challenged via appeal process was handed down on 06/12/ 2019. In terms of section 361 (1) (a) of the CPA the appellant was legitimately expected to lodge a notice of appeal within 10 days from the date of the conviction and sentence and in terms of section 361 (1) (b) of the CPA, the intended petition of appeal was to be lodged within forty five days from the date of the delivery of the aforesaid judgment or sentence. But he delayed.

In the instant application the circumstances leading to the delay are clearly stated in paragraphs 5 and 6 of the affidavit supporting the application. Notably, the applicant is averring that he filed his appeal within

the prescribed time but his appeal to the High Court No. 62 of 2022 was struck out on technical ground which was caused by the prison authority and was not in a position to control his affairs because of his dependency on the prison authority. He averred further that the reason why it was struck out was a failure to show date he was supplied with copies of judgement and proceedings.

For those reasons, I find and hold that, the applicant was not negligent and has advanced valid explanation warranting this Court exercise its discretion to grant the enlargement of time sought. In the result, I grant the extension of time. The notice of intention to appeal should be lodged within 10 days and petition of appeal within 30 days from the date of this ruling.



It is so ordered.

Dated at MBEYA this 20th day of February, 2023

A handwritten signature in black ink, appearing to be "J. M. Karayemaha", is written over a horizontal line.

J. M. Karayemaha
JUDGE