

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY**

**MISC. CRIMINAL APPLICATION NO 166 OF 2019  
(Originating from Criminal Case No. 860 OF 2007 in the District  
Court of Ilala at Samora Avenue)**

**ATHUMAN KASSIM @ CHAKUKU..... APPLICANT**

**VERSUS**

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

**RULING**

*11<sup>th</sup> December, 2019 & 19<sup>th</sup> December, 2019*

**KISANYA, J**

This is an application for leave to file notice appeal and petition of appeal to the High Court of Tanzania out of time. It originates from decision issued by the District Court of Ilala at Samora in Criminal Case No. 860 of 2007 on **8<sup>th</sup> July, 2007**. In that decision, the Applicant was convicted of armed robbery contrary to section 287A of the Penal Code (Cap. 16 R.E. 2002) and sentenced to serve thirty years imprisonment.

In order to appeal against the conviction and sentence, the Applicant lodged this application on the **3<sup>rd</sup> day September, 2019**. That was more than twelve years from the date of conviction and sentence. His application

is made by way of Chamber Summons under section 361(2) of the Criminal Procedure Act (Cap. 20 R.E. 2002). He also appended an affidavit which outlines the reasons for delay to file notice and petition of appeal within the statutory period.

When this application was called for hearing, the Applicant appeared in person, unrepresented, while Mr. Adolph Kisima, learned State Attorney appeared on behalf of the Respondent.

Being a lay person, the Applicant requested this Court to adopt the reasons for delay as stated in the Affidavit in support of the Chamber Summons and urged me to grant the application. Mr. Kisima, learned State Attorney did not object the application. He was of the view that the reasons stated in paragraphs 4, 5 and 6 of the Affidavit establish good cause for this Court to grant the Application.

I have considered the application and the submission made by both parties. It is important to note that appeal against decision originating from district court as in the matter at hand is governed by section 361 (1) of the Criminal Procedure Act (Cap. 20 R.E. 2002). This provision requires that notice of appeal and petition of appeal in relation to decision made by the district court be filed within ten days and forty five days from the date of

decision respectively. However, this Court is mandated to extend the time within which to file Notice and Petition of Appeal under section 361 (2) of the Criminal Procedure Act (Cap. 20 R.E. 2002) which provides as follows:

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

Thus, this Court has discretion of extending the time for filing notice and petition of appeal. Such discretion has to be exercised judiciously by considering whether there is good cause. The Court determines good cause if the Applicant accounts reasons for failure to file notice of appeal and petition in time.

I have read the Affidavit and noted that the applicant was convicted on **8<sup>th</sup> July, 2007**. According to section 361 (1) of the CPA (*supra*), his Notice of Appeal and Petition of appeal ought to have been filed within 10 days and 45 days from the date of conviction respectively. He states in his Affidavit that the Notice of Appeal was filed upon conviction and that this Application has been filed since he has never received what is called “the stamped copy so as to acknowledge receivership of the same”.

However, the Applicant does not state the date of filing the alleged Notice of Appeal. Copy of that notice was not attached to this Application. It is also not clear as to whether or not the Applicant applied for and was supplied with copies of judgment and proceedings, and when. Further, the Applicant does not state how he made follow-up of this matter to prison authorities and the Judiciary. Therefore, it is my considered opinion that the fact adduced in paragraph 5 of the Affidavit that the filed Notice of Appeal was omitted or misplaced in the Court's file lacks proof.

From the foregoing, I find that the Applicant has failed to account for his failure to file notice of appeal and petition of appeal in time and why it has taken him more than twelve years to file the Application at hand. Although the law does not provide time within which application for extension of time should be made, I am of the considered view that a person should not sit back or sleep and arise years later without accounting good reasons. As held by this Court in the case of **Yoram Nkaghule and Another vs R (1984) T.L.R 79**, the right to appeal is not open ended and the purpose of limitation is to avoid chaos in the business of the courts.

In the circumstance, I find no good cause for this Court to grant extension of time within which to file Notice of Appeal and Petition of Appeal out of time. Accordingly, I refuse the application for lack of merit.

It is so ordered.

Dated at **DAR ES SALAAM** this 19<sup>th</sup> day of **December, 2019**.

  
E. S. Kisanya  
**JUDGE**

Ruling delivered this 19<sup>th</sup> day of December, 2019 in the presence of the Applicant and Mr Adolph Kisima, learned State Attorney for the Respondent. Right of appeal to the Court of Appeal explained to the Applicant.



  
E. S. Kisanya  
**JUDGE**