

IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA

MISC. CRIMINAL APPLICATION NO.46 OF 2022

*(Originating from the District Court of Kilwa at Kilwa Masoko in Criminal
Case No.7 of 2020)*

SHILA MABELE TANGE..... APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

12/10/2022 & 24/10/2022

LALTAIKA, J.:

The applicant, **SHILA MABELE TANGE**, is seeking extension of time within which to file a petition of appeal. The applicant is moving this court under Section 361 (2) of the Criminal Procedure Act, [Cap. 20 R.E. 2019] now the REVISED EDITION 2022. This application is supported by an affidavit sworn by the applicant on 19/7/2022. Needless to say, that this application has not been resisted by a counter affidavit of the respondent.

During the hearing, the applicant appeared in person, unrepresented while Mr. Wilbroad Ndunguru, learned Senior State Attorney appeared for the respondent. The applicant submitted that when he was jailed, he filed the Notice of Intention to Appeal. The applicant went further and submitted that he got the certified copy of the judgment

late. The applicant insisted that he has explained other reasons in his affidavit.

In response, Mr. Ndunguru did not object the application. The learned Senior State Attorney submitted that it is true that the applicant received the judgement and proceedings of the lower court late. Mr. Ndunguru stressed that upon being convicted and sentenced on 30/12/2021 the applicant received the copies on 5/6/2022. The learned State Attorney maintained that the stamp of the Prison authority is indicative of the date of receipt. The learned Senior State Attorney went on and argued that the judgment was certified on the same date 30/12/2021. To this end, the learned Senior State Attorney contended that the same cannot be blamed on the applicant.

However, Mr. Ndunguru submitted, the rest of the grounds such as sickness and lack of adequate education have no proof and cannot be entertained by this court. Finally, the learned Senior State Attorney prayed that the application be granted so that the applicant can go ahead and prepare a Notice of Appeal and Petition of Appeal.

Having gone through the application by the applicant and submission of the respondent Republic, I am inclined to decide on the merit or otherwise of the application. In the instant application the reason for the delay is featured under paragraph 3 of the sworn affidavit of the applicant. The main reason grasped from that paragraph and as submitted by the learned Senior State Attorney is the delay by the court officials to supply the applicant with the certified copies of the proceedings and the judgment of the lower court.

In view of the above reason, it is apparent that the delay was caused by factors beyond the ability of the applicant to control and cannot be blamed on him.

The question now which pokes my mind is whether the reasons advanced by the applicant amounts to good cause. Although our law does not define what amounts to good cause, in a very recent case of **TCCIA Investment Company Limited vs DR. Gideon H. Kaunda**, (Civil Appeal 310 of 2019) [2022] TZCA 599 the Court of Appeal at page 13 quoted with approval the definition of the phrase 'sufficient cause' from the Erstwhile Court of Appeal for East Africa in the case of **Shanti v. Hindoche and Another** [1973] E.A. 207 and thus stated that: -

"...the more persuasive reason...that he can show is that the delay has not been caused or contributed by dilatory conduct on his part. But that is not the only reason."

On the instant matter, I can safely say that the applicant has advanced good cause for his delay to lodge his petition of appeal out of time. The inability to supply the certified copies of the proceedings and judgment by court official while the same were certified on the same date of conviction and sentence justifies that there was negligence on the part of the court and prison officials who were required to make follow-up at the trial court. I find that the applicant has advanced good cause for his delay and has acted diligently. He has not displayed any apathy, negligence or sloppiness in the prosecution he intends to take as was emphasised in the case of **Lyamuya Construction Co. Ltd vs. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application 2 of 2010 [2011] TZCA 4.

For the foregoing reasons, I hold that the applicant has advanced sufficient reasons for the delay to warrant this court to exercise its discretion to grant the enlargement sought. Therefore, the application is hereby granted. The applicant is given ten **(10) days** to file his Notice of Intention to Appeal and **forty-five (45) days** to lodge his Petition of Appeal effective from the date of this ruling.

It is so ordered.



E.I. LALTAIKA

A handwritten signature in black ink, appearing to read "E.I. Laltaika".

JUDGE
24.10.2022

COURT

This ruling is delivered under my hand and the seal of this Court on this 24th day of October, 2022 in the presence of the Mr. Enosh Gabriel Kigoryo, learned Senior State Attorney and the applicant who has appeared in person, unrepresented.



E. I. LALTAIKA

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JUDGE
24.10.2022