

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

AT MTWARA

MISC. CRIMINAL APPLICATION NO.47 OF 2022

*(Originating from the District Court of Lindi at Lindi in Criminal Case
No.5 of 2022)*

MUSTAPHA YUSUPH MUSSA..... APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

12/10/2022 & 24/10/2022

LALTAIKA, J.:

The applicant, **MUSTAPHA YUSUPH MUSSA**, is seeking extension of time within which to lodge the Notice of Appeal and Petition of Appeal Out of time. The applicant is moving this court under Section 361(2) of the Criminal Procedure Act [Cap. 20 R.E. 2019] now the Revised Edition of 2022. This application is supported by an affidavit affirmed by the applicant on 31/08/2021. It is noteworthy that this application has not been resisted by a counter affidavit of the respondent.

At the hearing, whereas the applicant appeared in person, unrepresented the respondent was represented by Mr. Wilbroad Ndunguru, learned Senior State Attorney. Arguing for the application, the

Ndunguru, learned Senior State Attorney. Arguing for the application, the applicant submitted that he is aggrieved against conviction and sentence of this court. The applicant submitted that the reason for his delay appears in his application. The applicant further contended that when he was jailed, he could not get anyone to assist him legally.

In reply, Mr. Ndunguru announced at the outset that he was not objecting the application. The learned Senior State Attorney submitted that there are three main reasons in the applicant's affidavit which, in his opinion, are sufficient to move this court to grant the application. The learned Senior State Attorney contended that at paragraph 3, the intention to appeal was shown as the appellant filed his notice of Intention to Appeal on time. The learned Senior State Attorney stressed that the same is attached to the application which was filed on time.

Submitting in support of the reason adduced on the 4th paragraph of the affidavit of the applicant, Mr. Ndunguru submitted that it is obvious the applicant's freedom was curtailed. Moreover, Mr. Ndunguru submitted he agreed with the applicant as contended at paragraph 5 that the copies of proceedings and judgment were received late. The learned Senior State Attorney further argued that there was no judgement from which to verify the date of certification because conviction was based plea of guilty. He also insisted that there is only an order and copy of proceedings. To this

end, the learned Senior State Attorney supported the application for enlargement of time.

Having gone through the submissions of both parties, I am inclined to decide on the merits or otherwise of the application. It is trite law that an application for extension of time is entirely in the discretion of the court to grant or not. Furthermore, extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient or good cause.

In the application at hand, the reasons for the delay are featured under paragraphs 3,4 and 5 of the affirmed affidavit of the applicant and vide his oral submission. The main reasons as can be grasped from the aforementioned paragraphs plus the oral submission are that **One**,intention of applicant shown by filing the Notice of Intention to appeal to this court filed on 15/2/2022 at the trial court and also received at the registry of this court on 17/2/2022 .**Two**, the curtailment of the applicant's right to liberty which made him unable to follow up his case and **three**, late supply of the certified copies of the proceedings and judgment.

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

The next issue I am called upon to resolve is whether or not the reasons advanced by the applicant amount to good cause. Our law does not define what amounts to good cause. However, 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 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 matter at hand, I can safely say that the applicant has advanced good cause for his delay to lodge the Petition of Appeal. Indeed, the chain of events explained in the applicant's affidavit and also his submission shows that in spite of inability to follow up on his case due to the circumstances beyond his control as a prisoner, he has not given up. I am convinced that the applicant has not only advanced good cause but also exhibited great diligence in pursuing his appeal. He has not shown any apathy, negligence or sloppiness in the prosecution he intends to take as emphasized in the case of **Lyamuya Construction Co. Ltd vs. Board of Registered trustees of the Young Women Christian Association of Tanzania** Civil Application No 2 of 2020 [2011] TZCA4.

For the foregoing reasons, I find and 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 applicant is hereby given forty-five (45) days to lodge his Petition of Appeal to the to this court effective from the date of this ruling.

It is so ordered.



E.I. LALTAIKA

A handwritten signature in blue 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 Mr. **Enosh Gabriel Kigoryo**, learned Senior State Attorney and the applicant who has appeared in person, unrepresented.



E. I. LALTAIKA

A handwritten signature in blue ink, identical to the one above.

JUDGE
24.10.2022