

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

**AT MWANZA**

**MISC. CRIMINAL APPLICATION NO. 01 OF 2022**

(Arising from Criminal Case No. 56 of 2019 at Magu District Court)

**HALULA MALOLE-----APPLICANT**

**VERSUS**

**THE REPUBLIC----- RESPONDENT**

**RULING**

*Last order: 28.03.2022*

*Ruling date: 31.03.2022*

**M.MNYUKWA, J.**

This is an application for leave to appeal out of time against the decision of Magu District Court which was delivered on 5<sup>th</sup> October 2020 in Criminal Case No 56 of 2019. The application is brought by way of chamber summons under section 361(2) of the Criminal Procedure Act, Cap 20 R.E 2019, it is also supported by the affidavit of the applicant, Halula Malole.

The application was argued before me orally during which the applicant appeared in person, unrepresented and the respondent, that is



the Republic was represented by Ms. Sabina Choghogwe, learned state attorney.

Arguing in support of the application, the applicant, Mr. Halula Malole pressed me to grant extension of time to file appeal out of time. He prayed to adopt the affidavit sworn by him and filed to this court on 5/1/2020 to form part of his submissions. In his oral submission, he was very brief as he submitted that, he had an intention to appeal against the decision of the District Court of Magu which convicted him for the offence charged, but he fell sick and since he was in prison, he was incapable of getting assistance to lodge the appeal within time and he failed to get the immediate assistance on how he can file that appeal when he was in prison. He therefore, prays this court to grant him leave to file appeal out of time.

Responding to the application, Ms. Sabina Choghogwe submitted that upon going through the applicant's affidavit and upon hearing the submission from the applicant, she is not opposing the application for extension of time to file an appeal out of time.

The respondent's counsel went on that, the applicant's affidavit shows that soon after delivering of the judgement the applicant fell sick. She added that, section 361(2) of the Criminal Procedure Act, Cap 20 R.E 2019



gives this court power to grant the applicant extension of time to file his appeal out of time if he had advanced sufficient reason that prevented him to lodge appeal within the prescribed time provided by the law.

She enlightens that, sickness is among the sufficient reason and taking into consideration that the applicant was in prison, she don't object to the applicant's prayer.

I have given careful consideration to the submissions of both parties that is the applicant and respondent's counsel. The central issue for consideration and determination is whether, sufficient reasons have been advanced to warrant this court to grant an extension of time sought by the applicant.

As it was cited in the applicant's chamber summons, the applicant moves this court through section 361(2) of the Criminal Procedure Act, Cap 20 R.E 2019. This is the provision of law that gives this court power to extend time upon good cause shown by the applicant. The section provides that:

*"Section 362(2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed."*



The legal position is settled that, the court has discretion to grant an application for extension of time upon the sufficient cause advanced by the applicant. In the case of **Blueline Enterprise Ltd vs. East Africa development Bank** Misc. Civil Cause No. 135 of 1995, CAT it was held that; -

*"...it is trite law that the extension of time must be for sufficient cause and that the extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, upon sufficient cause being shown which has to be objectively assessed by the court..."*

In the application at hand, I have gone through the applicant's affidavit and the parties' submissions, it is evident from the applicant affidavit that immediately after conviction he was sent at Magu prison and that upon admission he expressed his intention to appeal against the decision of Magu district court to the officer in charge of the prison.

From the above, I should point out that prisoners serving time in prison invariably have no control of their life when they are in prison as the same is controlled by the prisoner officer. In that end, upon examining his affidavit, I am satisfied that the applicant had the intention to appeal.



The applicant also stated in his affidavit that he fell sick soon after communicating his intention to appeal and that being in a prison, he did not get an assistance to file his appeal within time. As it was rightly submitted by the counsel for the respondent who did not object the application, sickness is a sufficient ground for this court to grant extension of time. Thus, the applicant being a prisoner and the fact that he was unable to get assistance on time, I am convinced that the applicant has advanced sufficient reason for this court to grant extension of time.

Furthermore, I have also considered the fact that, the respondent will not in any way be prejudiced if the applicant will be granted extension of time taking into consideration that an appeal is a constitutional right of which a person cannot be lightly denied when the higher court is there to determine the applicant's rights.

In the final analysis, I find that the applicant has managed to show good cause upon which this Court can exercise its discretion to grant extension of time to file an appeal out of time. Therefore, the applicant is granted 45 days from the date of this Ruling to lodge an appeal to this Court.

It is so ordered.





**M.MNYUKWA**

**JUDGE**

**31/03/2022**

**Court:** Ruling delivered in the presence of the applicant and the respondent's counsel.



**M.MNYUKWA**

**JUDGE**

**31/03/2022**

