

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN HIGH THE COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA**

MISC. CRIMINAL APPLICATION NO.45 OF 2021

*(Originating from the District Court of Mtwara at Mtwara in Criminal
Case No.156 of 2020)*

ATHUMAN JUMA SELEMAN @ CHINA..... APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Last Order: 6/4/2022

Date of Ruling: 11/4/2022

LALTAIKA, J.:

The applicant, Athumani Juma Seleman @ China, is seeking extension of time within which to file a petition of appeal. The applicant is moving this court under Section 361(1) and (2) of the Criminal Procedure Act, [Cap. 20 R.E. 2019]. This application is supported by an affidavit affirmed by the applicant on 15/12/2021. It is noteworthy that this application has not been resisted by a counter affidavit of the respondent.

At the hearing the applicant appeared in person, unrepresented whereas Mr. Wilbroad Ndunguru, learned Senior State Attorney appeared for the respondent. The applicant appeared to be rather brief. He prayed that his affirmed affidavit be adopted and form a part of his submission. He further submitted on the reasons for inability to lodge his appeal on time as provided by law. The reasons were as follows; **one**, failure to obtain legal advice on time. **Two**, challenges which the applicant encountered within the office of the prison warden. **Three**, the person who was assisting the applicant was also in remind custody. However, after his release the applicant encountered difficulties in accessing legal service.

In reply, the learned Senior State Attorney did not resist the application. Revealing the reason for absence of a counter affidavit that it signified that the Republic had no intention to enter an objection.

Mr. Ndunguru further argued that he was convinced that the grounds of delay advanced by the applicant were sound. He gave one example of paragraph 7 of the affidavit of the applicant which features the difficulties faced by the applicant. Besides, the learned Senior State Attorney submitted that the applicant being a prisoner, is curtailed and largely limited to speed up the matter. With those few remarks, Mr. Ndunguru acceded that the prayer by the applicant be granted.

In a brief rejoinder, the applicant reiterated what he submitted in chief. He prayerfully insisted his application be granted for the interest of justice.

Having gone through the submissions of both parties, I am now inclined to decide on the merit 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 refuse. Moreover, extension of time may only be granted where it has been sufficiently established that the delay was justified with sufficient/good cause.

In the instant application the reason for the delay by the applicant are featured under paragraph 3,4,5,6 and 7 of the affirmed affidavit of the applicant. The main reasons grasped from those paragraphs of the affidavit of the applicant are **one**, failure of the trial court to supply the certified copies of the judgment and proceedings on time to the applicant. **Two**, the applicant is a prisoner whose liberty is restrained thus unable to access legal services and facilities. Vide his oral submission, the applicant made additional reasons. These are **one**, failure to obtain legal advice on time. **Two**, challenges which the applicant encountered within the office of the warden. **Three**, the applicant encountered difficulties in accessing legal service due to the fact that the person who was assisting

him, a fellow remandee, was released from the custody making it even harder to access legal advice.

In view of the above facts from the affidavit plus the applicant's submission, 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. Besides, our law does not define what amounts to good cause. However, in the case of **Regional Manager, Tanroads Kagera vs. RUAHA Concrete Company Ltd.** Civil Application No. 90F 2007 (Unreported) it was held that;

"Sufficient reasons cannot be laid down by any hard and fast rule.

This must be determinedly in reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time."

As to the matter at hand, I can safely say that, the applicant has advanced good cause for his delay to lodge his petition of appeal out of time. The chain of events explained in the applicant's affidavit shows that in spite of inability to follow up his case due to the circumstances beyond his control as a prisoner, he has not given up. 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 forty-five (45) days to lodge his petition of appeal effective from the date of this ruling.

It is so ordered.



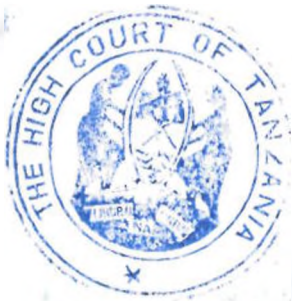
E.I. LALTAIKA


JUDGE

11.04.2022

COURT

This ruling is delivered under my hand and the seal of this Court on this 11th day of April, 2022 in the presence of the Mr. Wilbroad Ndunguru, learned Senior State Attorney and the applicant who has appeared in person, unrepresented.



E. I. LALTAIKA


JUDGE

11.04.2022