

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

**AT MTWARA**

**MISCELLANEOUS CRIMINAL APPLICATION NO.17 OF 2022**

*(Originating from District Court of Ruangwa at Ruangwa in Criminal Case  
No.79 of 2019)*

**SAIDI AZIZ NAMBUYO..... APPLICANT**

**VERSUS**

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

**RULING**

*Date of Last Order: 25/4/2022*

*Date of Ruling: 9/5/2022*

**LALTAIKA, J.:**

The applicant herein **SAID AZIZ NAMBUYO** is applying, under Section 361(1) and (2) of the Criminal Procedure Act, [Cap. 20 R.E. 2002] for an extension of time within which to file a Petition of Appeal out of time. The application is supported by an affidavit affirmed by the applicant on 10/02/2022. The respondent on her part, has not filed a counter affidavit to resist the application.

During the hearing the applicant appeared in person and fended himself while Mr. Wilbroad Ndunguru, the learned Senior State Attorney

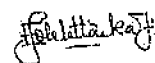


appeared for the respondent. The applicant appeared to be rather brief. He prayed his affidavit be adopted and form part of his submission.

Additionally, he submitted that he was sentenced by Ruangwa District Court on 10/5/2019 and taken to Lindi Prison. While at Lindi Prison he started pursuing his appeal by requesting certified copies of the proceedings and judgment of the trial court. However, his efforts proved futile. The applicant further argued that he was later transferred to Ruangwa Prison and in November, 2020 he obtained the certified copies of the proceedings and judgment.

The applicant stated that he started preparing an application for extension of time while at Ruangwa. When his application was filed before this court, he was summoned to appear and defend his application. He stated further that when he appeared before this court, he discovered that his application was defective since it only contained the signature of the head of the Prison without indicating the date on which it was signed. He had to pray for withdrawal of the first application and refiling an amended one hence this application. To wind up, the applicant prayed that his application be granted.

In response, Mr. Ndunguru, supported the application. The learned Senior State Attorney insisted that according to paragraph 7 of the



applicant's affidavit, it was true that he had been transferred from Lindi to Ruangwa prisons. He further stressed that the act of transferring him caused difficulties for the applicant to follow up the certified copies of the proceedings and judgment. In addition, Mr. Ndunguru argued that the judgment was delivered on 3/5/2021 after the applicant was transferred from Lindi to Ruangwa. To that end, the learned Senior State Attorney, submitted that he thought that the transfer hampered the applicant's ability to pursue his appeal on time. The applicant did not make any rejoinder.

Having scrutinized the application and submissions of the Parties, it is now upon me to decide whether or not to grant 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 it. Furthermore, extension of time may only be granted where it has been sufficiently established that the delay was with the sufficient/good cause.

In the instant application, the reasons for the delay by the applicant are featured under paragraph 6 and 7 of the affirmed affidavit and submission of the applicant. The reasons for the delay as grasped from those paragraphs of the affidavit and submission of the applicant are **one**, transfer from Ruangwa Prison to Lindi Prison and later from Lindi Prison



to Ruangwa Prison before coming to Lilungu Prison when his application was ready for hearing. **Two**, late supply of the certified copies of proceedings and judgment by the trial court to the applicant. **Three**, as a layperson was unable to discover the err made by the prison authority in his former application.

I am convinced that, the two reasons made the applicant unable to follow up his necessary documents for his intended appeal to this court. His withdrawn application featured an err which was occasioned by the Prisoner officer and not him. In addition, failure of the trial court to supply the necessary documents for his appeal on time.

The question now which comes in my mind is whether the above reasons amount to sufficient/good cause to move this court to grant the application. In that regard, I now turn to address this question which is the corner stone of this application.

Our law does not define what amounts to sufficient/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 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."

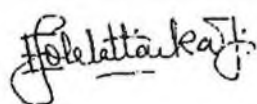


As to the matter at hand, I can safely say that, the applicant has advanced good cause to move this court to grant his prayer. The chain of event explained in the applicant's affidavit and vide his submission shows how the applicant was unable to follow up his case due to the circumstances beyond his control as a prisoner, who has not given up. It is my finding that the applicant has acted diligently without any sign of apathy, negligence or sloppiness in the prosecuting this application. See: **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 find and, hold that, the applicant has explained sufficient reasons of delay to warrant this court exercise its discretion to grant the enlargement sought. Therefore, the applicant is given forty-five (45) days to file his Petition of Appeal effectively from the date of this ruling.

It is so ordered.

**E. I. LALTAIKA**



**JUDGE**  
**09.05.2022**



**COURT:** This ruling is delivered under my hand and the seal of this Court on this 9<sup>th</sup> day of May,2022 in the presence of the Mr. Enosh Kigoryo, learned State Attorney and the applicant who has appeared in person, unrepresented.

**E. I. LALTAIKA**



**JUDGE**

**9.05.2022**

