

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**MISC. CRIMINAL APPLICATION NO. 26 OF 2021**

**KIZINDARO ISRAEL MARAZA ..... APPLICANT**

**VERSUS**

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

**(Arising from Criminal Case No. 102 of 2019 of the District  
Court of Musoma at Musoma)**

**RULING**

27<sup>th</sup> April and 12<sup>th</sup> May, 2021

**KISANYA, J.:**

In this application, the Court is moved to be pleased to extend time within which to lodge notice of intention to appeal and petition of appeal against the decision of the District of Musoma at Musoma in Criminal Case No. 102 of 2019 which was delivered on 10<sup>th</sup> March, 2021. The application has been predicated under section 361 (2) of the Criminal Procedure Act [Cap. 20, R.E. 2019] (the CPA). Supporting the application is the affidavit sworn by Kizindaro Israel Maraza on 6<sup>th</sup> April, 2021.

The sequence of events that the applicant considers as the reasons for the delay are deposed in the supporting affidavit. The reason deposed is sickness from 17<sup>th</sup> March, 2021 whereby the appellant was granted 21 days as excuse

from duties and 14 days for light duty. The respondent did not file a reply affidavit to contest the application.

When this matter came up for hearing, the applicant was represented by Mr. Ostack Mligo, learned advocate while the respondent was represented by Mr. Nimrod Byamungu, learned State Attorney.

Mr. Mligo commenced his submission by praying to adopt the supporting affidavit. He went on to submit that the applicant failed to lodge the notice of intention to appeal from 10<sup>th</sup> March, 2021 after falling sick. He tendered the sick sheet form to prove this fact. Referring the Court to the case of **Kapapa Kumpimbi vs Plant Manager Tanzania Breweries Ltd**, Civil Application No. 6 of 2010, CAT at DSM (unreported), learned counsel argued that sickness is sufficient cause. He therefore urged the Court to grant the application.

As alluded earlier, the respondent did not file counter affidavit to resist the application. However, Mr. Byamungu resisted the application on two reasons. One, that the applicant had not accounted for the delay from 10<sup>th</sup> -17<sup>th</sup> March, 2021 when he attended the hospital. Two, although he conceded that sickness is a good cause, the learned counsel contended that the filing of notice of intention to appeal is a light duty which the applicant was allowed to perform for 14 days. In that regard, the Court was asked to dismiss the application for want of merit.

Rejoining, Mr Mligo argued that the applicant was not required to account for the time before lapse of the time limitation and that 14 days was for excuse from light duty including filing the notice of intention to appeal.

From this rival arguments the issue for my consideration is whether the applicant has demonstrated good cause for the Court to grant the application.

Before proceeding further, I find it pertinent to state that pursuant to section 361(1)(a) and (b) of the CPA, the notice of intention to appeal and petition of appeal are required to be lodged within 10 and 45 days from the date of impugned decision, respectively. However, the time required to obtain the copy of judgment and proceedings is excluded in calculating the time within which to lodge the petition of appeal.

Reverting to the issue under consideration, the provisions of section 361(2) of the CPA empower this Court to extend time for filing the notice of intention to appeal and petition of appeal. The primary consideration for grant of extension of time is demonstration of good cause. There is no definite definition of what amount to good cause. Case law has established factors or conditions to be considered in determining whether good cause has been demonstrated by the applicant. For instance, In **Lyamuya Construction Company Limited vs Board of Trustees of YWCA**, CAT-Civil Application

No. 2 of 2010 (unreported), the Court of Appeal set out the following factors for grant of extension of time:

*"(a) The applicant must account for all the period of delay.*

*(b) The delay should not be inordinate.*

*(c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.*

*(d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged."*

In another the case of **Henry Leonard Maeda and Another v. Ms. John Anael Mongi**, Civil Application No. 31 of 2013 (unreported), the Court of Appeal stated that:

*"In considering an application under the rule, the courts may take into consideration; such factors as the length of delay, the reasons for the delay and the degree of prejudice that the respondent may suffer if the application is granted."*

As regards the matter at hand, the applicant ought to have lodged the notice of intention to appeal on or before 20.03.2021. According to the supporting affidavit, the delay to file the said notice of intention to appeal was caused by sickness. It is deduced from paragraph 7 of the affidavit and the

sick sheet appended thereto that the applicant health condition deteriorated on 17<sup>th</sup> March, 2021. He attended Musoma Government Hospital where the doctors gave him 21 days as excuse duty and 14 days for light.

I am at one with both counsel that sickness is good cause. It is the reason beyond human control. One cannot execute his duties including taking the necessary action related to the case when sickness strikes. This factor was considered in **Kapapa Kumpimbi vs Plant Manager Tanzania Breweries Ltd (supra) and Omary R. Ibrahim vs Ndege Commercial Services Ltd**. In the latter case, the period of six months was excluded in accounting for the delay because the parties did not dispute that the applicant was sick. Also, in another case of **Emanuel R. Maira vs The District Executive Director of Bunda**, Civil Application No. 66 of 2010 (unreported), the Court held that:

*"Health matters in most cases are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike."*

In the present case, the respondent did not contest that the applicant was sick from 17<sup>th</sup> February, 2021. Mr. Byamungu's argument that the applicant did not account for the period before 17<sup>th</sup> March, 2021 is misconceived. The applicant is required to account for the delay and not otherwise. Furthermore,

his ground that filing the notice of intention to appeal is light duty was not deposed in evidence. Therefore, I will not consider it.

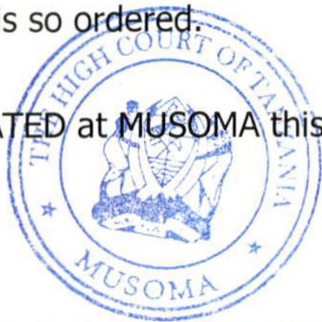
In view of the above, I am satisfied that the applicant has accounted for the delay from 17<sup>th</sup> March, 2021 when he went to the hospital to 7<sup>th</sup> April, 2021 when the 21 days excuse from performing duties lapsed. He then lodged the application at hand two days later, on 9<sup>th</sup> April, 2021. Thus, the applicant was prompt to take the necessary action when the health condition was good.

Ultimately, I find merit in this application and allow it by making the following orders:

1. The notice of appeal be lodged within 10 days from the date of this ruling.
2. The petition of appeal be filed within 45 days from the date hereof.

It is so ordered.

DATED at MUSOMA this 12<sup>th</sup> day of May, 2021.



  
E. S. Kisanya  
JUDGE

COURT: Ruling delivered through this 12<sup>th</sup> day of May, 2021 in absence of the parties. B/C Simon present.

  
E. S. Kisanya  
JUDGE  
12/05/2021