

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MWANZA  
AT MWANZA**

**MISCELLANEOUS CRIMINAL APPLICATION NO 29 OF 2022**

*(Originating from Criminal No. 127/2021 from Misungwi District Court at Misungwi)*

**THOMAS S/O MUSUNGWA .....APPLICANT**

**Versus**

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

**RULING**

*29th August & 27th September, 2022*

**Kahyoza, J.:**

Before me is an application for extension of time filed under section 361(1) (a) (b) and (2) of the Criminal Procedure Act, [Cap. 20 R.E. 2022] (the **CPA**). The applicant delayed to appeal, hence, this application.

The applicant's ground for application is that after his conviction he was transferred to Mbigiri Agricultural prison Morogoro so he delayed to lodge a notice of appeal.

The prosecution opposed the application and prayed for time to file a counter affidavit, which I denied.

A short background will suffice to explain whether the application is meritorious or otherwise. The trial court convicted the applicant on 12/5/2022 with an offence of malicious damage to property and sentenced

him to serve an imprisonment sentence of two years. The record shows the applicant was convicted and sentenced in his presence. He prayed for lenient sentence. The record has it further that the trial court explained to the applicant his right to appeal.

It is trite law that the applicant, for leave to extend time, has to exhibit a good cause or sufficient reason for delay. See *Mumello v. Bank of Tanzania* [2006] E.A. 227 where it was observed that-

*"It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause."*

Indisputably, the trial court delivered the judgment in the presence of the applicant and explained to him, his right to appeal. Had he expressed his right to appeal to the prison's officers immediately after his conviction, the prisons' officer would not have transferred him without processing his appeal. Transfer of a convict or prisoner from one prison to another is not a sufficient reason for delaying to lodge a notice of appeal. The law is clear, a convict is required to sign a notice of appeal and hand it to the prisons' office. He has no duty to submit a notice of appeal to the trial court, not only that but also, the applicant had a right to notify the trial court orally that he

intended to appeal. Oral notice of appeal is sufficient notice of appeal. Thus, the applicant's transfer did not prevent him to lodge a notice of appeal. After all, it is a duty of the prisons' officer to present copies of notice of appeal and petitions of appeal from convicts to trial or appellate court.

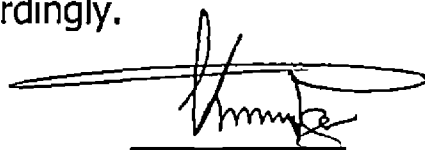
The law is silent on how a convict's notice of appeal made under section 361 of the **CPA** should be presented to court. However, section 363 of the **CPA** provides for mode of lodging a petition of appeal. I am of the firm view that a similar procedure ought to apply when the convict wishes to present a notice appeal. Section 363 of the **CPA** states-

*"363. Where the appellant is in prison, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the prison, who shall thereupon forward the petition and copies to the Registrar of the High Court."*

I wish to reaffirm my position that the applicant did not convince me that his transfer from one prison to another denied him an opportunity to lodge a notice of appeal on time.

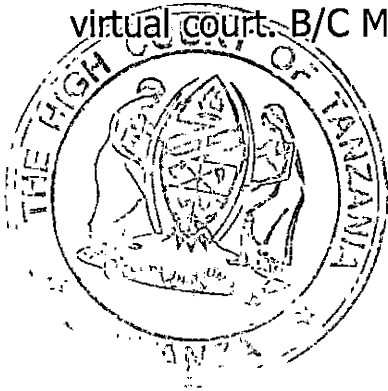
In the upshot, I dismiss the application for without merit.

It is ordered accordingly.



**John R. Kahyoza.**  
**Judge.**  
**27/9/2022**

**Court:** Ruling delivered in the absence of all parties as they failed to join the virtual court. B/C Ms. Jackline present.



A handwritten signature in black ink, appearing to read "John R. Kahyoza", is written over a horizontal line.

**John R. Kahyoza.**  
**Judge.**  
**27/9/2022**