

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 20 OF 2022

(Originating from Criminal Case No. 65 of 2021 at Karatu District Court)

ELIA JUMA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

23.06.2022 & 30.06.2022

N.R. MWASEBA, J.

Elia Juma, the applicant herein preferred the instant application under Section 361 (2) of the Criminal Procedure Act [Cap 20 R.E 2019]. The gist of the application is as follows:

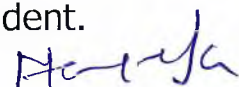
- 1. That the proposed appellant be granted leave to appeal out of time against the whole judgment and orders of the Karatu District Court.*



His application was supported by an affidavit sworn by Mr Patrick G.M Maligana, learned counsel for the applicant and it was never objected by the respondent.


In his affidavit, the counsel for the applicant deponed that, the applicant was convicted and sentenced on 30.12.2021 to serve 14 years imprisonment by Karatu District Court via Criminal case No. 65 of 2021. Being aggrieved by the said decision he filed notice of appeal within time while at Kisongo Prison. Thereafter, he was transferred to Loliondo Prison to continue serving his sentence. It is further pleaded that since his relatives were not aware of the case and as he was in prison, he failed to proceed with an appeal process. The affidavit revealed further that it was until 08.03.2022 when the applicant's relatives became aware of the case and decided to hire an advocate to represent the applicant. In their intended appeal they want to challenge both the sentence and conviction and since the delay was beyond the applicant's control they prayed for the application for extension of time to be granted.

At the hearing of the application which was done orally, Mr. Patrick M Maligana, learned advocate represented the applicant whereas Ms. Lilian Kowelo, learned state attorney represented the respondent.



Submitting in support of the application Mr Maligana learned counsel sought for the leave of the court his affidavit to form part of his submission. He added that the applicant was transferred from Arusha Central Prison (Kisongo) to Lolindo prison, so, due to geographical location and unfavourable conditions he failed to file his appeal within the prescribed time. Moreover, he told the court that there is illegality in the impugned judgment which need to be looked at by the court due to the fact that the applicant has never been given the right to be heard. He cited the case of **Tanesco Vs Mufungo Leornald Majura and others**, Civil Application No. 94 of 2016 and **Marry Mchome Mbwambo and Another (As joint administrator of the estate of late Gilliad Mbwambo) Vs Mbeya Cement Company Ltd** [TLS] LR 277 to support his arguments. He therefore prays that their application be granted due to the fore reasons.

On her side, the respondent did not object the application for the reason that the applicant adduced sufficient reason to grant the application as per **Section 361 (2) of the CPA**.

I have heard the parties' submissions and gone through the pleadings; the main issue for determination is whether the applicant adduced sufficient reasons for the application to be granted. 

The applicant has moved this court under **Section 361 (2) of the CPA** which stipulates that:

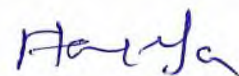
"The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed."

The applicant's counsel told the court that as the appellant was in prison, he was not able to do anything as he was depending on his relatives to find a lawyer who will represent him and together with his transfer to Loliondo made it impossible for him to make follow up to his intended appeal.

The Court of Appeal in the case of **Otiemo Obute V. Republic**, Criminal Application No. 1 of 2011, (CAT, Mwanza-unreported) held that:

"As a prisoner, his rights and responsibilities are restricted. Therefore, he did what he could do."

The same has been decided in numerous cases including the case of **Makaranga Swea Limbe V. Republic**, Misc. Criminal Application No. 21 of 2021[2022] TZHC 9969(06 June 2022); and **Gasaya Bwana @ Chacha V. Republic**, Misc. Criminal Application No. 54 of 2022 [2022]TZHC 9970 (06 June, 2022).



Subscribing to the cited authorities, I find that the applicant in this case was not a free agent, so the delay was not deliberate but it was out of his control.

For the foregone reasons, the application is granted for being meritorious. The Applicant is given 30 days to lodge his intended Appeal. The said date starts to count from today.

DATED at ARUSHA this 30th day of June 2022.



N.R. Mwaseba
N.R. MWASEBA

JUDGE

30.06.2022