

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

MISC. CRIMINAL APPLICATION NO.41 OF 2022

*(Originating from the District Court of Masasi at Masasi in Criminal Case
No.111 of 2021)*

PETER OSCAR @ DAUD..... APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

28/9/2022 & 5/10/2022

LALTAIKA, J.:

The applicant, **PETER OSCAR @ DAUD**, is seeking extension of time within which to file a petition of appeal. The applicant is moving this court under Section 361 (2) of the Criminal Procedure Act, [Cap. 20 R.E. 2019]. This application is supported by an affidavit sworn by the applicant on 5/7/2022. It is needless to say 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 court noted the applicant as having mental impairment thus, he did not submit.

Thus, at the outset Mr. Ndunguru did not object the application. However, the learned Senior State Attorney argued that they have considered paragraph 5 and 6 of the applicant's sworn affidavit. The learned Senior State Counsel further submitted that at paragraph 6 the applicant asserts that he is a layman and that he was not informed in prison of his rights to appeal. Luckily, the applicant was told by his fellow prisoners of that possibility albeit of time. Mr. Ndunguru stressed that the applicant's mental status has challenges. The learned Senior State argued that this means the applicant narrated at paragraph 6 is in line with his condition.

It was Mr. Ndunguru's submission that at paragraph 7 the applicant asserted that he has limited assistance in prison to which the learned Senior State Attorney conceded. To buttress his argument, the learned Senior State Attorney referred this court to the case of **Shija Marco vs. Republic**, Criminal Appeal No.246 of 2018 CAT, Mwanza (TANZLII) whereby the Court of Appeal considered the aspect of limited freedom of the applicant who was in prison. To this end, the learned Senior State Attorney prayed this court to grant the application.

Having gone through the application by the applicant and submission of the respondent Republic, 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 6 and 7 of the sworn affidavit of the applicant. The main reasons grasped from those paragraphs of the affidavit of the applicant are **one**, the applicant being a layman was not aware of the limitation of time to lodge the Petition of Appeal besides was informed by the prison authority and came to realise that his intended appeal is out of time from his fellow prisoners. **Two**, the applicant is a prisoner whose liberty is restrained thus, has limited access to either legal services and facilities or legal assistance or could not be able to engage an advocate who could assist him to pursue his matter. See, **Shija Marco vs. Republic** (supra).

In view of the above reasons taken from the applicant's affidavit plus the respondent'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

A handwritten signature in blue ink, appearing to read "E. I. Laltaika", written over the printed name.

JUDGE

5.10.2022

COURT

This ruling is delivered under my hand and the seal of this Court on this 5th day of October, 2022 in the presence of Florence Mbamba, learned State Attorney and the applicant who has appeared in person, unrepresented.



E. I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E. I. Laltaika", written over the printed name.

JUDGE

5.10.2022