

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 43 OF 2021**

(Originating from District Court of Lindi at Lindi in Criminal Case No. 14 of 2020 and  
Criminal Case No.15 of 2020 before Hon. M.A. Batulaine, SRM)

**RAHIMU MOHAMED MBUNGO@TONGOLANGA.....APPLICANT**

**VERSUS**

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

**RULING**

*Date of Last Order: 21/2/2022*

*Date of Ruling: 21/2/2022*

**LALTAIKA, J.**

The applicant, Rahimu Mohamed Mbungu @ Tongolanga, has moved this court under section 361(2) of the Criminal Procedure Act, Cap 20 [R.E. 2019] to extend time within which to file his petition of appeal out of time. His application is supported by his own affirmed affidavit expounding on circumstances and reasons for the delay.

The factual background leading to this application can be briefly gleaned from his affirmed affidavit. The applicant was convicted on

Stealing by agent contrary to section 273 of the Penal Code [Cap. 16 R.E. 2002] which is currently Revised Edition 2019 before the District Court of Lindi at Lindi in two separate criminal cases. He was convicted and sentences to a jail term of five years for each case. Aggrieved, he lodged a notice of intention to appeal on time with prison authorities on both cases. On the 26<sup>th</sup> March 2021, however, he received copies of the court proceedings and judgment respectively bearing certification date the 30<sup>th</sup> June 2020.

The applicant avers in his affidavit that he was later transferred from Lindi Prison to Kitai Prison in Mbinga where he started preparing his petition of appeal. However, before completion of such a process, he was transferred once again to Lilungu Central Prison in Mtwara. While at Lilungu the applicant made follow up of his case and realised that his petition was filed out of the prescribed time hence, this application.

When this application was called for hearing the applicant appeared in person and unrepresented whereas, the respondent Republic enjoyed the services of Ms. Ajuaye Bilisanga, learned Principal State Attorney assisted by Ms. Faraja George, learned Senior State Attorney.

On his part, the applicant submitted that he lodged this application since he had withdrawn his appeal upon realising that the same was filed out of time by prison authorities.

In response, Ms. Bilisanga submitted that the Republic did not oppose the application adding that they had not filed any counter affidavit to this effect to allow the applicant to be granted extension of time to file his petitions of appeal out of the prescribed time. The learned Principal

State Attorney added that the rationale for not objecting the application is to ensure that justice is done to both parties to the matter.

In the view of the above submission and the application in general, I have directed my mind to principles guiding this court in applications for extension of time to file an appeal out of procedurally prescribed time as echoed in the case of **Lyamuya Construction Co. Ltd. vs. Registered Trustees of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4 (03 October 2011).

In light of the reason advanced by the applicant under paragraph 7,8,9 and 10 of his affidavit; it does not take much thought to realize that being a prisoner on transfer from one prison to the next, the delay was contributed by circumstances beyond his control. The applicant's prayer to withdraw his appeals upon realizing that the same was filed out of time point to his diligence and commitment to prosecute the envisaged appeal.

In view of the above, I am convinced that the applicant has demonstrated sufficient cause to move this court to grant him extension of time to file his appeal out of time. The applicant is hereby given twenty-one (21) days from the date of this ruling to file his appeal.

It is so ordered.



E.I. Laltaika

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".  
Judge

21.02.2022

**Court:**

This ruling is delivered under my hand and the seal of this Court on this 21<sup>st</sup> day of February, 2022 in the presence of Ms. Ajuaye Bilisanga, learned Principal State Attorney, Ms. Faraja George, learned Senior 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".

Judge

21.02.2022