

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TABORA DISTRICT REGISTRY)**

AT TABORA

MISC. CRIMINAL APPLICATION NO. 28 OF 2023

*(From the Decision of the Resident Magistrates' Court of Tabora in Criminal Case No. 43
of 2022)*

ADAM FRANK @ MWAKISALE APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

Date of Last Order: 09/10/2023

Date of Ruling: 16/10/2023

KADILU, J.

This is a ruling on the application for leave to file a petition of appeal out of time. The application is filed under Section 361 (2) of the Criminal Procedure Act, [Cap. 20 R.E. 2019] and Section 14 of the Law of Limitation Act [Cap. 89 R.E. 2019]. It is supported by an affidavit of the applicant. The applicant's grounds for the application are that, **firstly**, he was convicted for the offence of transporting illegal immigrants contrary to Section 46 (1) of the Immigration Act, [Cap. 54 R.E. 2016]. After a full trial, he was sentenced to pay a fine of Tshs. 20,000,000 or serve twenty (20) years imprisonment.

Aggrieved with the decision, on 03/01/2023 he gave a notice of appeal to the trial court as required by the law. **Secondly**, the judgment of the trial court was delivered on 29/12/2022, and on 10/05/2023, he filed online the petition of appeal. **Thirdly**, on 20/05/2023, he was informed by the prison admission office that his petition of appeal was mistakenly registered in the High Court, Tanga Registry. On 15/06/2023, he re-filed his petition of appeal

online. **Fourth**, on 20/06/2023, he was informed that his appeal could not be registered on account of being time-barred. He then found that the only remedy he had was to apply for an extension of time. Therefore, he filed this application on 17/07/2023 seeking leave of the court to file the petition of appeal out of time.

When the application was called on for hearing, the applicant appeared in person without legal representation while the respondent was represented by Ms. Suzan Barnabas and Ms. Joyce Nkwabi, both the learned State Attorneys. The applicant had nothing to submit concerning his grounds for application. He only urged the court to grant his application. Ms. Suzan Barnabas informed the court that the respondent Republic does not oppose the application because the applicant being a prisoner, is not an independent agent who would make a follow-up of his earlier appeal before the court. The learned State Attorney added that the applicant has managed to show diligence and a good cause for the delay.

She prayed to withdraw a counter affidavit which was filed earlier by the respondent in opposition of the application. Following that concession by the respondent, the point for determination by this court is whether the application is meritorious or otherwise. It is a trite law that the applicant for leave for an extension of time has to exhibit a good cause or sufficient reason for the delay. In the case of ***Mumello v. Bank of Tanzania*** [2006] E.A. 227, it was observed that:

"... application for extension of time is entirely in the discretion of the 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."

As to what amounts to good or sufficient cause, the Court of Appeal in the case of ***Jumanne Hassan Bilingi v R.***, Criminal Application No, 23 of 2013 (CAT) stated as follows:

"...what amounts to good cause is upon the discretion of the court and it differs from case to case. But basically, various judicial pronouncements define a good cause to mean, a reasonable cause which prevented the applicant from pursuing his action within the prescribed time."

The Court of Appeal in various authorities has tried to set guidelines to be followed by the courts below it when exercising discretion to grant or refuse to grant an extension of time. In the case of ***Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010, the Court of Appeal laid down the factors to be considered before granting any extension of time:

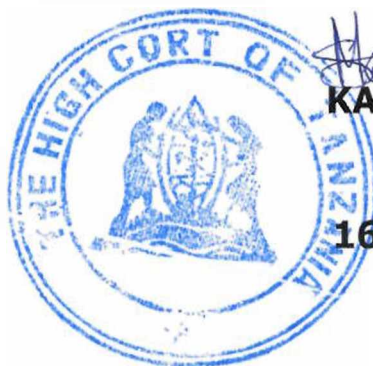
- (a) The delay should not be inordinate;*
- (b) The applicant must account for all the period of delay;*
- (c) The applicant must show diligence and not apathy, negligence, or sloppiness in the prosecution of the action that he intends to take;*

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

In the instant application, the applicant has accounted for the days of delay and demonstrated that the delay was caused by a technical error in an online case filing system whereby his petition of appeal which was filed well within time, could not be admitted in this Registry. For that reason, I think the applicant cannot be blamed for the non-registration of his earlier appeal. Given the fact that the applicant is in custody, but he managed to follow up on his intended appeal as shown above, I am of a firm view that he was diligent in pursuing his appeal and has shown sufficient cause for the delay warranting the grant of his application by this court. Coupled with the fact that the Republic has not opposed the applicant's request, I see no good reason for withholding it.

In this regard, the applicant is granted leave to file his petition of appeal within forty-five (45) days from the date of this ruling.

Order accordingly.



Kadilu
KADILU, M.J.

JUDGE

16/10/2023