

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
[ARUSHA SUB-REGISTRY]

AT ARUSHA

**MISC. CRIMINAL APPLICATION NO. 4 OF 2024**

*(Originating from the District Court of Arumeru, Criminal Case No. 72 of 2022)*

**HUSSEIN RAJABU @ HAMISI ..... APPLICANT**

**Versus**

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

**RULING**

*15<sup>th</sup> & 15<sup>th</sup> March, 2024*

**MWASEBA, J.**

The applicant has preferred this application under **Sections 10 of the Appellate Jurisdiction Act**, Cap. 141 [R.E 2002] and **361(1)(b) of the Criminal Procedure Act**, Cap. 20 [R.E 2019], moving the court to grant him an extension of time to file a notice of appeal and petition of appeal out of time. The application is supported by an affidavit affirmed by the applicant. The respondent did not contest the application.

Before delving into the substance of the application, it is instructive to appreciate facts of the case leading to the application, albeit briefly. The applicant was charged with grave sexual abuse contrary to **Section 138C(1)(a) and (2) of the Penal Code**, Cap. 16



[R.E 2022] in the District Court of Arumeru. He was convicted and sentenced to serve twenty years imprisonment. He could not file notice of appeal or petition of appeal because as soon as he was convicted, he was transferred to Loliondo prison.

On 15/03/2024, when the application was called on for hearing, the applicant appeared in person unrepresented while the respondent Republic was represented by Mr. Philbert Msuya, learned State Attorney. Hearing of the application proceeded orally.

When given floor, Mr. Msuya after thoroughly revisiting the application, he did not object it. He supported that the same be granted as prayed. On his part, the applicant being a lay person, he was happy that the application was uncontested, reiterating his prayer that the application be granted.

I have carefully examined the affidavit in support of the application. The main issue for determination is whether the delay to file the notice of appeal and petition of appeal was associated with sufficient cause.

This court is vested with discretionary powers to extend time for a party but such discretion must to be exercised judicially. Such powers may only be exercised where it has been sufficiently established that sufficient cause for the delay has been shown. What amounts to



sufficient cause and how the discretionary powers can be exercised was subject of discussion in many cases including the Court of Appeal decision in **Esio Nyomolelo and Another v. Republic**, Criminal Application No. 11 of 2015 (Unreported), where the Court stated:

*"With respect, Rule 10 of the Rules requires an applicant seeking for extension of time to show good cause before the Court uses its discretion to grant extension of time. The applicant is required to show and explain what prevented him from lodging his/her application within the prescribed time. In so doing, the applicant has to account for every day of the delay caused by him in his affidavit."*

Now, the question is whether the applicant has furnished sufficient cause for the delay to warrant the extension of time sought. The applicant had indicated under paragraph 3 of the affidavit that when he was convicted and sentenced, he was transferred from Arusha to Loliondo prison. He further stated under paragraph 4 that he is a prisoner hence irresponsible in any way for the delay of the copies of judgment and proceedings to reach in prison in time. In other words, he associates the delay with the court's failure to provide him with copies of proceedings and judgment in time.

According to the trial court's judgment, the applicant was convicted and sentenced on 26/09/2022. He stated that as soon as he





was sentenced, he was transferred from Arusha Prison to Loliondo Prison. The learned State Attorney, who readily supported the application, did not doubt his averments. I have no reason to doubt the applicant's assertions because it is common practice for prisoners to be transferred from one prison to another.

The applicant being held in prison has no access to lawyers, nor can he follow up on his appeal personally. He solely depends on the prison officers to assist in making follow-ups and even filing the appeal. Being held behind the bars, there is no way the applicant could facilitate his appeal without being assisted by the prison officers. It has been held many times, and now that circumstances under which the prisoners are placed have consistently been a subject of the courts' special consideration in applications for extension of time, and the court has always cautiously treated such applications. The Court of Appeal decision in **John Paulo Yusuph v. Republic**, Criminal Appeal No. 582 of 2017 (reported TanzLii), when faced with an akin scenario, observed the following:

*"We are aware that it has been the position of this Court that in an application for extension of time by a person in prison, **the applicant is given the benefit of doubt as to whether or not he set in motion the appeal process.**"* (Emphasis added)



Another reason for the delay in filing the appeal, as stated under paragraph 4 of the supporting affidavit, is that the applicant was delayed in being supplied with copies of the judgment and proceedings. As indicated above, the applicant being in prison, has no means of following up his appeal. Everything is left to the prison officers to look into. Although he has not intimated whether the said documents were availed to him, the law still allows the exclusion of the time the applicant spent while waiting for copies of judgment and proceedings. In the case of **Sospeter Lulenga v. Republic**, Criminal Appeal No. 107 of 2006 (unreported), the Court observed:

*"The learned judge found no good cause for extending the period of appeal. We respectfully fault this finding. One, paragraph 2 of the affidavit in support of the application clearly states that the appellant expressed his intention to appeal **and also applied for copies of judgement and proceedings when he was admitted at Mpwapwa prison upon conviction and sentence.** Second, having so expressed his intention to appeal, **the appellant left the matter in the hands of the prison officer who was duty bound to transmit the Notice of Appeal to the High Court.** The default of the prison officer to forward the Notice of Appeal to the High Court is sufficient ground for extending the period of appeal."*(Emphasis added)



Since the applicant was transferred to Loliondo prison soon after he was sentenced, he could not smoothly initiate his appeal. Similarly, since he was not availed with copies of proceedings and judgment in time, it is no wonder how he could file his appeal. More seriously, being in prison, he has no room to make follow-up of his appeal in person; everything is entrusted to the prison officers. Notably, the Republic supported the application after noting that the delay was not attributed by the applicant's negligence.

Guided by the above discussion and the authorities referred to, I find the applicant's delay in filing a notice of appeal and petition of appeal was prompted with sufficient cause. I find merit in the application and allow it. The applicant is granted thirty (30) days from the date of this ruling to file a notice of appeal and petition of appeal in this court.

Order accordingly,

**DATED at ARUSHA** this 15<sup>th</sup> day of March 2024.



  
**N. R. MWASEBA**

**JUDGE**