

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

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 19 OF 2021

(C/O Katavi Resident Magistrate's Court Criminal Case No. 11 of 2019)

MASHAKA S/O AMOSI APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

Date: 14 & 14/12/2021

RULING

Nkwabi, J.:

The applicant is mainly praying for extension of time within which to lodge a notice of intention to appeal to this court out of time. The application is preferred under section 361(2) of the Criminal Procedure Act, Cap. 20 R.E. 2002. It is supported by the affidavit duly sworn by the applicant.

The basis for this application, are clear in the unopposed applicant's affidavit which are: the delay in lodging the notice of appeal was not to be blamed on him as he was in prison and he encountered several

transfers whilst in prison. There was also a delay in being supplied with the proceedings of the case by the trial court.

At the hearing of this application, the applicant appeared in person while the respondent was duly represented by Ms. Safi Kashindi, learned State Attorney. Meanwhile, the applicant reiterated his averment in the affidavit as his submissions. The respondent supported the application for reasons that it is the applicant's constitutional right to appeal and was prevented by reasons not to be shouldered on the applicant.

It is trite law that failure to file a counter affidavit is a signification that the application is not factually opposed, see **Mosses Ndosu v Suzana Ndosu, Misc. Land application no 117 of 2013** and **Emmanuel Gidahotay v Gambanyashita Muhale Misc. land application no 41 of 2017** (both being unreported decisions of the High Court). Since the respondent does not object the application as the respondent neither filed a counter affidavit, nor by counter argument in oral submissions, the application ordinarily ought to be granted. The applicant has assigned sufficient reasons for the delay as he cannot be blamed on the same, rather it is the Prison officers who delayed in lodging of the appeal, and the applicant too encountered prison transfers. Additionally, the applicant was precluded from timely lodging his appeal as the trial court delayed in

supplying him with the proceedings. For those reasons, the application is granted. The Applicant is given 7 days within which to lodge his notice of appeal from the date of this ruling. The next steps of filing the applicant's appeal should be in accordance with the Criminal Procedure Act, Cap. 20 R.E. 2019.

It is so ordered.

Dated at Sumbawanga this 14th day of December 2021.




J. F. NKWABI
JUDGE