

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF SUMBAWANGA**  
**AT SUMBAWANGA**

**MISC. CRIMINAL APPLICATION NO. 33 OF 2022**

*(Originated from Criminal Case No. 178/2020 Nkasi District Court)*

**DAVIDS/O MWANALYELA.....APPLICANT**

**VERSUS**

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

**RULING**

***Date of last order:*** 18/08/2022

***Date of Ruling:*** 16/09/2022

**NDUNGURU, J.**

The applicant in this application one David s/o Mwanalyela has brought this application under Section 361 (2) of the Criminal Procedure Act, Cap 20 Revised Edition 2019. In his application the applicant prays for the following orders:

- (i) That the court be pleased to allow the applicant to appeal out of time.
- (ii) Any other order (s) the court may deem fit and just to grant.

The chamber application is duly supported by the affidavit duly sworn by the applicant and the affidavit sworn by Officer in charge of Sumbawanga Prison. The reasons for the application are contained in the affidavit of the applicant. The reason is that the assigned officer who deals with prisoners appeals was on leave and after return was appointed to attend military training course. This reason has been authenticated by the affidavit of the Officer in charge of the prison. Para 3 of the affidavit of the Officer in charge of the prison states that the assigned officer who deals with prisoners appeals was on leave and after return was appointed to attend military training course.

When the application was called up for hearing the applicant appeared in person (unrepresented) while the respondent/the Republic enjoyed the service of Ms. Maguta the learned State Attorney. When the applicant was given an opportunity to submit in support of the application briefly prayed the court to adopt his reason set forth in his affidavit.

The learned State Attorney for the respondent resisted the application. In her submission she stated that the assigned officer who deals with appeals was on leave also went for course. She submitted that it is very difficult for all admission officers to go for courses leaving the office

vacant. That in his affidavit the applicant has not named such officer. She urged the application be dismissed.

Having considered the submissions of the parties and examined the grounds stated in the applicant's affidavit, the striking question in this application is whether there is any justification for this court to exercise its discretion under Section 361 (2) of the Criminal Procedure Act, Cap 20 (Revised Edition 2019). The said provision bestows this court with the discretion as it says:

***"The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has lapsed."***

It is trite that extension of time under the above provision is a matter of discretion on part of this court, but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case.

From the applicant's affidavit, it is clearly noted that the respective prison officer was on leave also went for course. This fact has been authenticated by the Officer in charge of the prison. To my view this

reason is tangible because it made it difficult for the applicant to make follow up of his matters.

Apart from the above, I have also considered the particular circumstances of the applicant. Being inmate serving time in prison, the applicant had no control over his affairs; he was at the mercy of the Officer in charge of the prison or the prison authority. As stated in his affidavit, that the officer deals with appeal went for course, he could not have chance to check and follow up the matter properly. In this regard, it is unfair to expect too much from him. See the case of: **Buchumi Oscar V. Republic**, Criminal Appeal No. 295 "B" of 2011 Court of Appeal of Tanzania, **William Ndingu @ Ngoso V. Republic**, Criminal Application No. 3 of 2014 Court of Appeal of Tanzania and **Maneno Muyombe & Another V. The Republic**, Criminal Appeal No. 435 of 216 Court of Appeal of Tanzania. (All unreported).

Basing on the foregone analysis I am of the conclusion that the applicant's pursuit for extension of time has exhibited good cause. In the consequence I grant the application. The applicant to lodge his appeal within (45) days.

It is so ordered.



  
**D. B NDUNGURU**

**JUDGE**

**16/09/2022**

ORIGINAL