

TANZANIA / JUDGMENT

KESI HAISIWE EXTENSION OF TIME

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TANZLIIDECIDED
17 February 2025

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA
SUB - REGISTRY AT MBEYA MISC. CRIMINAL APPLICATION NO. 478 OF 2025 CASE REFERENCE
NO. 202501072000000478 (From Criminal Case Session No. 64 of 2021 in the High Court Tanzania
at Mbeya) KESI HAISIWE..... APPLICANT VERSUS THE
REPUBLIC.....RESPONDENT

RULING

10th & 17 February, 2025 NONGWA, J. The applicant has brought this application under section 11 (1) of the Appellate Jurisdiction Act Cap 141 R.E 2022. In his application he prays for the orders that; this Court may be pleased to grant the applicant leave for an extension of time within which to lodge notice of appeal and Memorandum of appeal out of time to the court of appeal of Tanzania in Criminal Session No. 64 of 2021 and any other relief this Court may deem fit and just to grant. The chamber summons is dully supported by an affidavit sworn by the applicant. From the applicant's affidavit, he avers that he was convicted for the offence of manslaughter Contrary to Section 195 and 198 of the Penal 1 Code Cap 16 R.E 2022 and was sentenced to 16 year's imprisonment. That the said trial court judgment was delivered on 4/10/2023 and was served to him on 30/09/2024 which led to failure to file notice of appeal on the sentence within time. That he failed to file notice within time as he did not know the case number. When the application was called up for hearing, the applicant appeared in personal (un represented) he prayed to adopt his application and affidavit to form part of submission for his application while the respondent enjoyed the service of Mr. Rajabu Msemo, the Learned State Attorney, the respondent did not object the application. I have examined the grounds stated in the applicant's affidavit, the issue is whether there is any justification for this court to exercise its discretion under section 11 (1) of the Appellate Jurisdiction Act Cap 141 R.E

2022. The said provision gives this court discretion where there is good cause to admit an appeal notwithstanding that the period of limitation prescribed has lapsed. It is trite law that extension of time is a matter of discretion of court, but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case. This Court in a number of cases has accepted certain reasons as amounting to sufficient reasons. But no 2 particular reason or reasons have been set out as standard sufficient reasons. It all depends on the particular circumstances of each application. It follows

therefore, the grounds upon which an order for extension of time may be granted or otherwise would also depend on the circumstances of each case. Ordinarily, those grounds should be outside one's control. This was the position in the case of Felix Tumbo Kisima vs TTCL and Another

[1997] TLR 57 where the court stated that sufficient cause should not be interpreted narrowly but should be given a wide interpretation to encompass all the reasons which are outside the applicant's power to control or influence, resulting in delay in taking any necessary steps. The determination of this application will entirely depend on whether or not the applicant has given convincing explanation for the delay in lodging his notice of appeal. Given the fact that the reasons advanced by the applicant in his affidavit have been accepted by the respondent as true, then it will be accepted without any argument that he has advanced sufficient reasons. The affidavit demonstrates that the delay was neither caused by nor can it be attributed to any slack conduct on the applicant. It is stated from the applicant's affidavit that delay in being supplied with copies of judgment to capture the correct criminal session number was the cause of 3 the delay in filing the notice to appeal a thing which is beyond his control as a prisoner. I have also considered the particular circumstances of the applicant being serving time in prison, the applicant had no control over his affair. It has been observed in the number of decisions including the case of William Ndingu @ Ngoso vs Republic, Criminal Application No.3 of 2014 (CAT, unreported) and Maneno Muyombe and Another vs Republic, Criminal Appeal No. 435 of 2016 [2019] TZCA 260 (23 August 2019; TanzLII), that being in prison, the applicant loses control of the appeal process thus amounting to sufficient cause for the delay. Based on the circumstances of this application, I find applicant has advanced good cause for delay. In that regard I grant the application, notice of intention to appeal be filed within ten days from the date of this ruling and the petition of appeal be filed in accordance with the dictate of the law. V.M. NONGWA Judge 17/2/2025 4 Dated and Delivered at Mbeya this 17th Day February 2025 in presence of Mr. Dominic Mushi, Ms. Atuganile Kaponda and Mr. Denis Lazaro – State Attorneys for the Respondent and the Applicant in person. V.M. NONGWA JUDGE 5

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