

TANZANIA / JUDGMENT

Mkami Mbusiro Marwa

COURT
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IN THE HIGH COURT OF TANZANIA MUSOMA SUB-REGISTRY AT TARIME MISCELLANEOUS
CRIMINAL APPLICATION NO. 4135 OF 2025 REFERENCE NUMBER 202502172000004135 (Arising
from Criminal Case No. 000010138 of 2024 in the District Court of Tarime at Tarime) BETWEEN
MKAMI MBUSIRO @MARWA..... APPLICANT VS
REPUBLIC.....RESPONDENT

RULING

04th & 04th March, 2025 M. L KOMBA, J,; The applicant, Mkami Mbusiro Marwa is before this court praying for extension of time. Application is made through chamber summons and supported affidavit and has been preferred under section 361(2) of the Criminal Procedure Act [Cap 20 R.E 2022]. In his affidavit the applicant averred that, he was convicted by Tarime District Court at Tarime and sentenced to serve 30 years imprisonment on the charge of Gang rape. He was not satisfied with the decision and hence lodged a Notice of Intention to appeal and before he was able to Page 1 of 6 be supplied with the copy of judgment, he was transferred to Mugumu Prison for maize harvesting and later he was returned back to Tarime Prison and availed with the copy of judgment but the time for appeal was already lapsed. Henceforth, in the interest of justice his prayer in chamber summons should be considered since the circumstances of delay was not occasioned by his negligence. In counter affidavit, the respondent in totality denied all averred by the applicant and hence contest the application. During hearing of the application, the respondent was represented by Ms. Damary Nyange, learned state attorney and the applicant stood solo. In their submissions, the applicant, shortly stated that he failed to file his appeal timely because he was delayed to be supplied with the copy of the judgment and at rejoinder he prayed for the mercy of this court. On the respondent side, Ms. Nyange, strongly contested the application and submitted that, the applicant has delayed to file the appeal for five months since the judgment was delivered, there is no proof if he filed the notice within time and he did not avail when he was transferred, from and to, Mugumu Prison and Tarime Prison. The counsel referred this court to the case of Yusufu Hassan vs Republic, Criminal Page 2 of 6 Application No. 50/12 of 2017 in which the court explains things to consider when granting extension of time among others, length and reason of delay, and degree of prejudice on side of respondent if the application is granted. It is counsel submission that, the applicant has failed to assist this court with documents which could help the court in exercising its jurisdiction and he has failed to account for the five months of delay as it was stated in the case of Elinazi Matiko Ng'eng'e vs

Republic, Criminal Application, No. 29/01 of 2017. The respondent prayed for this court to find the application has no merit and no prejudice as the offence was proved and has no chance on appeal. After going through the record of application and submissions of parties, the question is whether the application at hand is tenable or has merit. It is trite principle that extension of time is a matter of discretion of the court upon the applicant showing good reason. The court has to exercise such discretion judiciously and flexibly with due regard to the relevant facts of the particular case. However, an applicant under section 361 of CPA once accounted for delay, extension of time becomes a matter of right, in emphasizing this, I recite the case of Kassana Page 3 of 6 Shabani & Another v. Republic, Criminal Appeal No. 476 of 2007 (unreported) where Court of Appeal had this to say; 'Since there appears to be a recurring or perennial problem, we would like to take this opportunity to make it dear that once an applicant under section 361 of the Act has satisfactorily accounted for the delay in giving notice of appeal or filing a petition of appeal, extension of time ought to be granted as a matter of right' In looking for tenability of application, what I gathered from applicant affidavit is that he was moving from one prison to another and there is possibility of delay in receiving the copy of judgement. He was sentenced while at Tarime and received at Tarime Prison, later he was transferred to Mugumu Prison for maize harvesting task. After he was returned to Tarime, he received the copy of judgment but the time for was already lapse. In the case of Yusufu Hassan vs Republic (Supra), the Court of Appeal stated that; 'The law is settled that in an application for extension of time, the applicant is required to show good cause...' The court cited other two decisions to that effect, which are; Kalunga & Company Advocates Ltd Vs National Bank of Commerce Ltd Page 4 of 6

(2006) TLR 235 and Attorney General V Tanzania Ports Authority & Another, Civil Application No. 87 of 2016. Further, in considering the length of delay, the reason for delay and degree of prejudice that the respondent may suffer if the application is granted as stipulated in the case of Yusufu Hassan vs Republic (Supra), this court finds that, due to the circumstances of the applicant being moved from one prison to another the delay is not excessive and his reason is tenable and has accounted for such delay. On the part of the prejudice, this court finds no prejudice will be occasioned to the respondent if this application is granted, the applicant is in the losing hand more that the respondent if this court will not allow this application. In the premises and under the circumstances of this case, the applicant has exhibited good cause and accounted for delay bearing in mind that he is in prison as was observed in the case of Maneno Muyombe & Another vs. Republic, Criminal Appeal No. 435 of 2016 that; 'Being inmates serving time in prison, the appellants invariably had no control over their affairs and that they were necessarily at the mercy of the Officer-in-Charge of their prison, as it were. In this regard, it was unfair to expect too much from them.' Page 5 of 6 Consequently, application is allowed. The applicant is granted 30 days from today, to file an appeal to the High Court against the decision of District Court of Tarime in Criminal Case No. 10138 of 2024. It so ordered. DATED at TARIME this 04th day of March, 2025. Page 6 of 6

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