

**IN THE HIGH COURT OF TANZANIA
AT MTWARA**

**MISC. CRIMINAL APPLICATION NO. 20/2005
In the Matter of Application for leave to appeal out of time
AND
In the Matter of Mtwara D/Court Cr. Case No. 220/2002**

ALLY MOHAMEDI MKUPA - - - - -APPLICANT

VERSUS

THE REPUBLIC - - - - -RESPONDENT

Date of Last Order: 22/5/2007

Date of Ruling: 29/5/2007

RULING

SHANGALI, J.

The applicant ALLY MOHAMED @ MKUPA was charged with the offence of Rape Contrary to Section 130 and 131 of the Penal Code Cap 16 of the laws as amended by Section 5(2) of the Sexual Offences Special Provisions Act No. 4/1998 before the Mtwara District Court Criminal Case No. 220/2002. The applicant was found guilty, convicted and sentenced to serve life imprisonment.

Being dissatisfied with the decision of the District Court, the applicant is intending to appeal but it has been discovered that his appeal is time barred. He is now craving before this court for leave to file his notice of appeal out of time and leave to file his petition of appeal out of time.


In his chamber summons accompanied with affidavit deposed by himself the applicant has narrated several reasons which caused his appeal to be delayed. He claimed that upon his admission at the Lilungu central Prison he disclosed his intention to appeal to the Prison Officers. Later his notice of appeal was prepared by the Prison Officers and he remembers to have signed the same. That he believed that it was the duty of the Prison Officers to

submit the notice of appeal to the Court to be filed. The applicant attributed the cause of his delay to the negligence of the Prison Officers because as a person under captivity he could do nothing to facilitate the matter. Section 361(2) of the Criminal Procedure Act 1985, provide that, this Court may, for good cause admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.

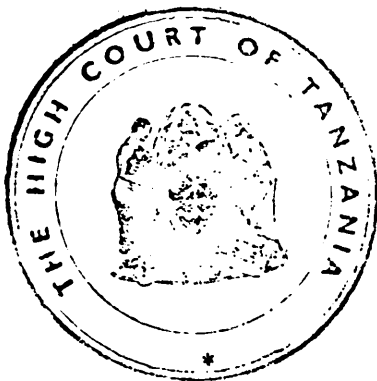
I am grateful to Mr. Hyera Learned State Attorney, who appeared for the respondent/Republic and who quickly saw the desparate dilemma of the applicant and opted to support the application. In deed the circumstances of the case coupled with the serious sentence of life imprisonment necessitate the application to be granted and give the applicant a chance to challenge his conviction and sentence.

The application is granted. The applicant is required to file his notice of appeal within 10 days from the date of this ruling and file his petition of appeal within fifteen 15 days from the date of this ruling.

It is so ordered.


M.S. Shangali
JUDGE
29/5/2007

Ruling delivered todate 29th May 2007 in the presence of Mr. Luena, Learned State Attorney for the Respondent/Republic and the applicant in person.




M.S. Shangali
JUDGE
29/5/2007