

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(DAR ES SALAAM DISTRICT REGISTRY)**  
**AT DAR ES SALAAM**

**MISC. CRIMINAL APPLICATION NO. 44 OF 2020**

*(Originating from Cr. Case No. 312 of 2018 in the District Court of Temeke)*

**MOHAMED SALIM MPUTA ..... APPLICANT**

*VERSUS*

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

**RULING**

*Date of last Order: 11/05/ 2020.*

*Date of Ruling: 26/05/2020*

**E. E. Kakolaki, J**

This is an application by the applicant for extension of time to file Notice of Appeal and Appeal out of time against the decision in Criminal Case No. 312 of 2018. The same has been brought under section 361(2) of the Criminal Procedure Act, [Cap. 20 RE 2002], supported by the Affidavit of the said applicant and one Seleman Salum Mputa his relative.

The applicant was indicted before the District Court of Temeke facing two counts on offences of Rape contrary to section 130(1),(2)(e) and 131(1) of the Penal Code [Cap. 16 R.E. 2002] and Impregnating a School Girl contrary to section 60A(3) of the Education Act [Cap. 353 R.E 2002] as amended by

Act No. 4 of 2016. He was convicted of 1<sup>st</sup> count of rape and sentence to serve (30) thirty years imprisonment on the 23/09/2019 while acquitted on the 2<sup>nd</sup> count. Being aggrieved and intending to appeal found himself time barred to lodge a Notice of Appeal to challenge the said decision. However, he never gave up as he asked his relative to apply for copies of Judgment and proceedings from the trial court for appeal purposes. Upon receiving the said copies through his relative one **Seleman Salum Mputa** he filed this application seeking an extension of time within which to file the Notice of Appeal and the appeal in this court out time.

When the application came for hearing on the 11/05/2020 the applicant was represented by Mr. **Yuaja E. Balankiliza** learned advocated whereas the Respondent appeared through Mr. **Adolf Kisima** learned State Attorney. Mr. Balankiliza submitting in support of the application prayed to adopt the applicant's affidavit. Advancing the applicant's reasons for failure to lodge a notice timely he contended that after entering in the prison appellant did not know what to do until when his relative one Selemani Salum Mpupa visited him and asked for assistance in collection of copies of judgment and proceedings for appeal purposes. That this fact is proved by the sworn affidavit of Selemani Salum Mpupa annexed to the applicant's affidavit in support of the application as annexure 2. And further that before meeting his relative the court did not inform him of his right to appeal which is a mandatory requirement of the law as a result found himself out of time. He therefore submitted that sufficient cause for delay has been shown and prayed the court to grant the prayers as per the chamber summons.

Under Section 361(2) of the Criminal Procedure Act, [Cap. 20 RE- 2002], this court has discretion to extend time for the applicant to file the Notice of

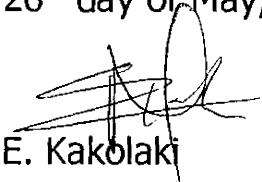
Appeal upon good cause being shown. What amounts to good cause is upon the discretion of the Court and it differs from case to case. See the case of **Jumane Hassan Bilingi Vs. Republic**, Criminal Application No. 23 of 2013 (unreported).

This court having considered the circumstances of this application and the fact that the application has not been objected by the Respondent, finds itself without reason to deny the applicant's prayers as it is satisfied that good cause has been sufficiently established for his delay to file the appeal.

In the circumstances and for the foregoing reasons, I am inclined to allow the application and grant the orders as prayed. The applicant is to file the Notice of Appeal within 14 days and appeal within 30 days from the date of this ruling.

It is so ordered.

**DATED at DAR ES SALAAM** this 26<sup>th</sup> day of May, 2020.




E. E. Kakolaki

**JUDGE**

**26/05/2020**

Delivered at Dar es Salaam today 26<sup>th</sup> day of May 2020 in the presence of Mr. **Yuaja E. Balankiliza** advocate for the applicant, Ms. **Frolida Winceslaus** State Attorney for the Respondent (Republic) and in the absence of the applicant whose appearance is dispensed with due to Covid19 pandemic.



E. E. Kakolaki

**JUDGE**

**26/05/2020**