

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(KIGOMA DISTRICT REGISTRY)**

**AT KIGOMA**

**APPELLATE JURISDICTION**

**MISC. CRIMINAL APPLICATION NO. 11 OF 2020**

*(Original Criminal Case No. 20 of 2020 of the District Court of Kasulu District at Kasulu)*

**PATRICK S/O EZIRON.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

19/05/2020 & 11/06/2020

**I.C. MUGETA, J.**

This is an application to lodge notice of appeal out of time and for leave to appeal out of time. I shall not deal with the first limb because the notice of intention to appeal was filed in time on 28/1/2020 and it is attached on the affidavit supporting the application. Despite lodging the notice, no appeal was filed. The reason for the delay are in paragraph 4 of the affidavit. They are two. Firstly, that the applicant fell sick after the conviction and secondly, that the prison officer who had to assist with the preparation of the Petition of went on leave. Unfortunately, no applicant's medical treatment evidence

or leave form of the prison officer has been attached. On this account, I would have held that no good cause has been disclosed to enable this court exercise its discretionary powers to grant the leave sought. I have a good reason not to do so.

On the hearing date, the applicant did not appear because he is in custody. We could not join him via video link because the network was down. Since he had filed an affidavit which is the evidence to be relied upon, I decided to proceed in his absence. The Respondent was represented by Shaban Masanja, learned State Attorney, who did not object the application. In fact, the respondent had not even filed counter affidavit.

I have found that the affidavit does not disclose a sufficient cause. However, according to the proceedings of the case attached on the affidavit, the applicant was convicted of his own plea of guilty. He had been charged with rape c/s 130 (1) (2) (e) and 131 (1) of the Penal Code. He was sentenced to 30 years jail imprisonment.

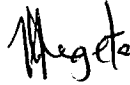
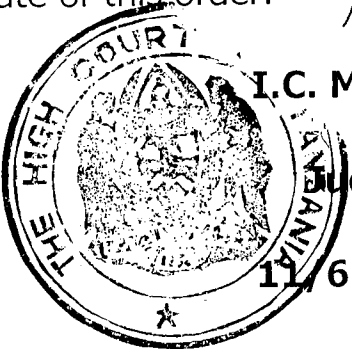
Section 360 of the Criminal Procedure Act [Cap. 20 R.E 2019] provides that a conviction on a plea of guilty is not appealable. Therefore, the applicant has no right of appeal. In the attached intended petition of appeal, the applicant wishes to complain about the equivocality of his plea and facts of the case not disclosing the ingredients of the offence. These are matters which goes to the legality of the process leading to his conviction. Illegality is always a good ground upon which leave to appeal out of time can be granted. The plea upon which the applicant was convicted reads:-

*"Ni kweli nilimbaka Keleni Tobias"*

The facts which were adduced to prove the ingredients of the offence partly reads:-

*"...in the morning the accused was in Kinazi Village within Buhigwe District in Kigoma Region where he had canal (sic) knowledge of one Keleni Tobias a pupil of standard six ... without her consent"*

It is my view that there is a need for this court to consider whether the said plea was unequivocal and whether the facts stated discloses the major ingredient of the offence of rape which is penetration. This is important owing to the severity of the punishment imposed. On this account, I hold that even if the affidavit does not disclose a sufficient cause to grant extension of time, for the alleged illegality in the intended memorandum of appeal, I hereby exercise the discretionary powers of this court to grant leave to appeal out of time. The intended appeal to be filed within twenty (20) days from the date of this order.

  
**I.C. Mugeta**  
Judge  
11/6/2020  


**Court:** Delivered in chambers in the absence of the appellant and in the presence of the Shaban Masanja, State Attorney.

**I.C. Mugeta**

**Judge**

**11/6/2020**

**Order:** This ruling to be delivered to the applicant not later than the 12<sup>th</sup> June, 2020.

**Sgd: I.C. Mugeta**

**Judge**

**11/6/2020**