

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA

MISCELLANEOUS CRIMINAL APPLICATION NO 103 OF 2019

(In the matter of an application for leave/ extension of time for giving notice of intention to appeal out of time; Arising from the order of the High Court in Criminal Appeal No 143/2017)

BETWEEN

NICOLAUS S/O FELICIAN @ MKANDALAAPPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

19 & 19/02/2020


RUMANYIKA, J.:

When the application for extension of time within which Nicolaus Felician @ Mkandala (the applicant) to appeal against the conviction and sentence of 30 years in jail of 17/9/2014 of Nyamagana district court was called on yesterday for hg, the court records missed a notice of appeal alleged to have been lodged on 19/9/2014, but the applicant had a copy of it retained by prison officers – Butimba central prison. He was given time and today he has it herein court. Ms. M Changale learned state attorney for the respondent Republic was of the view that all was well except the contradictory dates and endorsement by the trial magistrate in the bottom

of the impugned judgment. However, the learned state attorney was, rightly so in my view of the considered view and submissions that the contradicting dates should be resolved in the applicant's favour. In other words the learned S/A conceded to the instant application.

Now that it is trite law that in criminal matters a notice of appeal institutes appeal, and as said, the notice was lodged say within the 1st two days of the impugned decision, and, if anything the purported delay was due to the above stated reasons the prison applicant wasn't to blame any way, the application is granted. The applicant may wish to lodge his memorandum of appeal within 45 (forty five) working days of this ruling. Ordered accordingly.




S. M. Rumanyika
JUDGE
19/02/2020