

IN THE HIGH COURT OF TANZANIA

AT TABORA

APPELLATE JURISDICTION

MSC. CRIMINAL APPLICATION No. 87 OF 2019

**(Original criminal Case No. 190 of 2018 of the District Court of
Nzega, at Nzega)**

SHIJA NDALI MATONGO ----- APPLICANT

VERSUS

REPUBLIC ----- RESPONDENT

RULING

24/02 & 28/02/2020

BONGOLE J.

The applicant **SHIJA NDALI MATONGO** was arraigned before Nzega District Court for the offence of Rape c/s 130 (1)(2)(e), he was convicted and sentenced to serve 30 years imprisonment.

Since the time prescribed for him to lodge an appeal to this court has elapsed and thus he lodged this application praying this court to extend time to allow him to lodge notice of appeal and petition of appeal and any other order this court may deem fit and just to grant in the circumstances of this application.

This application is supported by an affidavit of the applicant Shija Ndali Matongo who stated as follows.

- 1. That after being convicted and sentenced, the trial magistrate did only said to him that he has a right to appeal,**

she did not went further and explain to him the appeal process.

- 2. That the copy of judgment of the trial court was supplied to him on the same day he was convicted and sentenced, but because of the failure by the trial magistrate to inform him the appeal process as mandated by section 359 (1) of the CPA, the said copy of judgment was taken by his father on 14/02/2019 to the advocate for appeal purposes and awaited for the feedback.**
- 3. That on 18/06/2019 the copy of judgment was returned to him by his sister with bad news that his father had passed away before completion of the process for engaging an advocate hence this application so that he can start the appeal process by himself.**
- 4. That, the delay of lodging notice of appeal and the petition of appeal in time was firstly caused by the trial magistrate not informed him the appeal process in terms of the law, and also the death of his father who died before engaging an advocate which added salt to the wound hence this application.**

The applicant has laid the foundation of his application on the above stated grounds.

When the application came for hearing the applicant appeared in person while the respondent was represented by the learned State Attorney Ms. Mercy Ngowi.

The applicant submitted that, he delayed to file an appeal as he received a copy of judgment on the same date it was read to him but his late father took it so as he may assist him in looking for an advocate, unfortunately his father passed away before finding an advocate hence the delay. He added that, it is his sister who informed him about the death of his father.

In reply Ms. Ngowi submitted that, she objects the application basing on the 3rd paragraph of the applicant's affidavit, he was given a copy of judgment on the same date, the issue that his father was looking for an advocate is no longer a good cause as per the decision in Ali Kinanda & 2 others Vs Republic Criminal Appeal No. 1/2016 CAT at Dodoma.

The learned state attorney prayed this application be dismissed since the applicant was convicted on 11/02/2019 and he was transferred to Uyui after six months, he had ample time to file his appeal.

Section 361 (2) of CPA Cap 20 R.E 2002 which this application is founded empowers the High Court for good cause to admit an appeal after the prescribed period of limitation has lapsed.

The applicant admits that he was supplied with a copy of judgment on the spot after it was read to him but the magistrate did not explain to him the process of appeal though she said to him that he has right to appeal.

Anyone who belongs to the legal fraternity would have understood the meaning of the words "Right of appeal is explained" as it appears on the trial court judgment and the limitations that comes with that right, the situation may be different if the same message is conveyed to a lay person.

Considering facts that the knowledge of law in Tanzania is not widespread lay people and litigants who appears in person have the right to have reasonable assistance to enable them understand what is going on, and what is expected of them at all stages.

I am convinced that the applicant never understood his rights as explained by the trial magistrate after conviction and sentence until he was transferred to Uyui prison. To that effect I am satisfied with the reasons of delay deposed by the applicant in his affidavit and I hereby grant the application.

The applicant is now at liberty to file notice of appeal within ten (10) days and petition of appeal within 30 days from the date of this order.

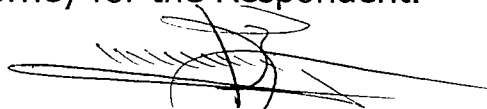


S.B. BONGOLE

JUDGE

28/02/2020

Ruling delivered under my hand and seal of the Court in chambers this 28/02/2020 in the presence of the Applicant in person and Ms. Jaines Kihwelu, learned State Attorney for the Respondent.



S.B. BONGOLE

JUDGE

28/02/2020