

IN THE HIGH COURT OF TANZANIA

AT TABORA

APPELLATE JURISDICTION

MSC. CRIMINAL APPLICATION No. 104 OF 2019

**(Original criminal Case No. 64 of 2019 of the District Court of
Nzega, at Nzega)**

WILSON BENARD ----- APPLICANT

VERSUS

REPUBLIC ----- RESPONDENT

RULING

24/02 & 28/02/2020

BONGOLE J.

The applicant **WILSON BENARD** instituted this application seeking for orders that:-

- 1. An application for extension of time to lodge notice and petition of appeal out of time be allowed.**
- 2. Any other order this court may deem fit and just to grant in the circumstances of this application.**

This Application is made under Section 361 (2) of Criminal Procedure Act Cap 20 R.E 2002.

The application is supported by an affidavit deposed by the applicant annexed an affidavit sworn in Tabora where he states as follows:-

- 1. That he was arraigned before the District Court of Nzega, at Nzega for the offence of Rape c/s 130(1)(2)(e) and 131(1) of**

the Penal Code Cap 16 [R.E 2002] and sentenced to serve a custodial sentence of thirty (30) years in prison in Criminal Case No.64 of 2019.

- 2. That, after being convicted and sentenced, the trial court did only explain to him the right of appeal, it did not go further to inform him the period of time within which to file notice of appeal and petition of appeal to come to term with section 359(i) of the CPA Cap 20 R:E 2002,hence,this application in view of the fact time within which to appeal is known to him while the prescribed time to appeal was already.**
- 3. That, the failure by the trial court to discharge its mandatory obligation under section 359(i) of the CPA CAP 20 R:E 2002 caused the delay at issue .**

It is on the above stated grounds the applicant prays this court be pleased to extend time to enable him appeal to this court.

When the application came for hearing the applicant prayed this court to adopt the grounds he advanced in his affidavit.

Ms Mecy Ngowi learned state Attorney who represents the Respondent submitted that the judgement was clear that the Applicant was informed of his right of appeal, hence his ground has no merit.

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.

Though, the learned State Attorney object this application. I am still convinced that the applicant was not informed properly that the period of

time within which to file notice of appeal and petition of appeal in term of section **359(i) of the CPA CAP 20 R.E. 2002.**

I am satisfied with the reasons of delay deposed by the applicant in his affidavit, to that effect I hereby grant the application.

The applicant is 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