

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

MISC.CRIMINAL APPLICATION NO. 9 OF 2020

**(Originating from Criminal Case No. 10 of 2019 of the District
Court of Igunga at Igunga)**

JEREMIA NTINANGI.APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

KIHWELO, J.

The ruling in this matter was reserved by my late brother, Bongole, J, who suddenly fell ill as he started composing some few paragraphs of the ruling in this matter and sadly he died the same night of 15th July 2020 two days before the date when the ruling was set for delivery on 17th July 2020. The record has now been re-assigned to me.

In this matter the applicant is essentially seeking enlargement of time within which to file notice and petition of appeal out of time against the decision of the Igunga District Court, in Criminal Case No. 10 of 2019. The application is by Chamber Summons supported by Affidavit of the applicant and the application has been taken out under the provisions of Section

361(2) of the Criminal Procedure Act, [Cap. 20 R.E 2019] (Henceforth "the CPA"). The background to the matter, is, briefly, that the applicant stood arraigned for one count of rape predicated under the provisions of the Penal Code [Cap. 16 R.E 2019] (Henceforth "the penal code"). As the applicant did not admit to the charge a trial was conducted and upon full trial the trial court found the appellant guilty, convicted him accordingly and sentenced him to serve a custodial sentence of thirty (30) years on the 23rd October 2019.

Being unhappy with the said conviction and sentence, the applicant sought to appeal to this Court but for some reasons the said appeal could not be filed in time hence the present application.

The affidavit in support of the application reads in part as follows-

"3. That, dissatisfied, I gave the notice of appeal to the trial court within time as required by the law. This was on 25/10/2019.

4. That, owing to the length of the custodial sentence imposed on me, I was relocated to Uyui Central Prison at Tabora from Igunga District Prison for want of maximum security.

5. That, while at Uyui Prison, I received the copy of judgment from the trial court for me to be able to prepare my appeal to this court.

6. That, on 15/11/2019, I prepared my appeal and handed the same for typing at the Admission Office of Uyui Central Prison at Tabora, and it was ready for signing on 22/11/2019.

7. That, at the Admission Office, I was asked as to the whereabouts of the notice of appeal I gave to the trial court so that the same can be attached with the appeal ready for endorsement by the Officer In-Charge and subsequent transmission to this court.

8. That, I explained to the Admission Officer that the same was not returned to me by the trial court by the time I left Igunga District Prison at Igunga to this prison. Then efforts were made to trace the same both at Igunga District Prison and the trial court but without success.

9. That, following the unfortunate turn of events as alluded to in paragraph 8 above, I was advised to lodge an application for extension of time within which to appeal to this court out of time, which I hereby do.

10. That, there is a point of law involved in the decision sought to be appealed against, of sufficient importance, touching on the propriety of the conviction in that it was arrived at against the weight of the evidence adduced. Copy of the judgment is attached for reference and marked as A1. Leave of the court is hereby sought for the same to form part of this affidavit.

11. That, the error alluded to in paragraph 10 of this affidavit greatly occasioned miscarriage of justice on my part, and that unless this court is moved, through appeal, to correct the irregularity, injustice will prevail."

At the hearing of the application before me, the applicant appeared in person fending for himself. He basically adopted what was averred in his affidavit in support of the application.

Mr. Tito Mwakalinga, learned State Attorney appeared for the respondent Republic and when asked to address the Court he was fairly short. He readily said that he does not oppose the application.

The central issue for determination before me is whether or not the application before this court for enlargement of time is meritorious. In order to answer this question, I find it convenient to start with the law which gives this Court discretion to enlarge time within which to file notice and petition of appeal.

"Section 361(2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed."

There is a plethora of legal authorities in which the phrase "good cause" referred in the provision above has been judiciary tested. In the case of **Aidan Chale v. The Republic**, Criminal Appeal No. 130 of 2003 (unreported) the Court of Appeal followed the path taken in the decision in

R. v. Governor of Winchester Prison, ex p Roddie [1991]2 All ER 931, in which at page 934 Lloyd, L.J had the following to say;

" 'Good cause' will usually consist of some good reason why that which is sought should be granted. It does not have to be something exceptional. "To amount to "good cause" there must be some good reason for what is sought." It was considered that it was undesirable to define "good cause" and that it should be left to the good sense of the tribunal which has to decide whether or not good cause has been disclosed."

Furthermore, the phrase "good cause" received judicial interpretation in the case of **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) in which the Court of Appeal stated;

"What constitutes good cause cannot be laid by any hard and fast rules. The term "good cause" is relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion."

It is instructive to state that under section 361(2) the High Court has a wide discretion to extend the time. This discretion, however wide it may be, is a discretion to be exercised judiciously having regard to the particular circumstances of each case. I think that the law relating to extension of time under the above provision is now fairly settled, after the decision of the case of **Kassana Shabani and Another v Republic**,

Criminal Appeal No. 476 of 2007 (unreported) which was quoted with approval in the recent case of **Ntigwa Gwisu v Republic**, Criminal Appeal No. 428 of 2015 (unreported) in which the Court of Appeal while stressing the point that extension of time to appeal under section 361(2) of the CPA is a discretion of this Court but such discretion must be exercised judiciously and flexibly with due regard to the relevant facts of the particular case stated thus:

"Since there appears to be a recurring or perennial problem, we would like to take this opportunity to make it clear that once an applicant under section 361 of the Act has satisfactorily accounted for the delay in giving notice of appeal or filing a petition of appeal, extension of time ought to be granted as a matter of right."

I have deliberately reproduced paragraphs 3 to 11 of the applicant's affidavit in order to find out reasons explaining the delay. A critical scrutiny of the paragraphs of the affidavit that I reproduced clearly indicates that the applicant's failure to file the notice of appeal and the petition of appeal in time was occasioned by reasons beyond his control and therefore I find considerable merit in the applicant's prayer in that he has satisfactorily accounted for the delay.

I am satisfied that good cause has been shown for granting of an extension of time to file notice and the petition of appeal. The applicant is at liberty to file notice of appeal within ten (10) days from the date of delivery of this ruling. Thereafter, he shall, within thirty (30) days, lodge petition of appeal.

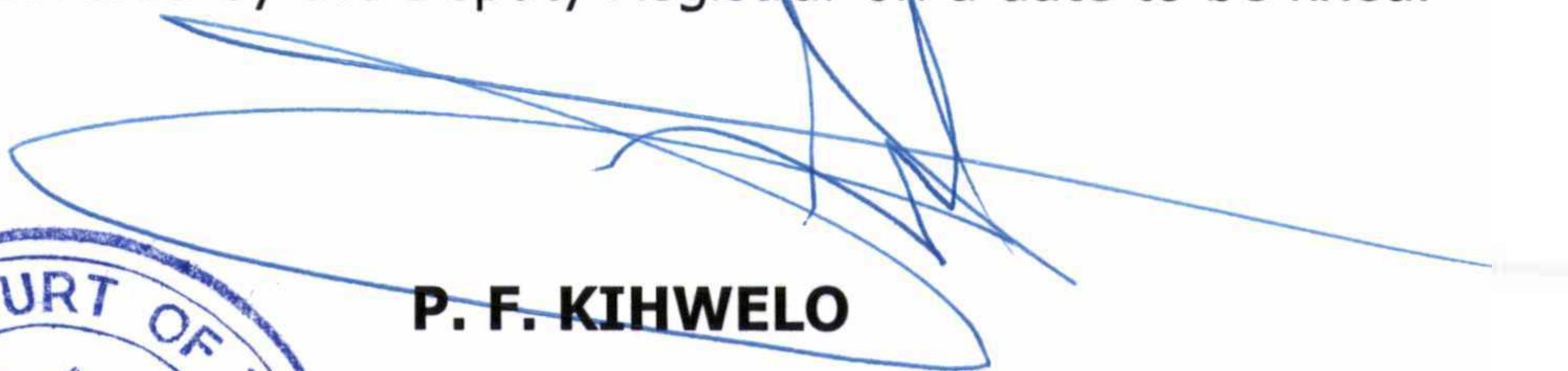


P. F. KIHWELO

JUDGE

13/12/2020

Ruling to be delivered by the Deputy Registrar on a date to be fixed.



P. F. KIHWELO

JUDGE

13/12/2020



Date: 17/12/2020

Coram: Hon. B.R. Nyaki, Deputy Registrar

Applicant: Present in person

Respondent: Absent

B/Clerk: Grace Mkemwa, RMA

Court:-

Ruling delivered this 17th day of December, 2020 in the presence of the Applicant but in absence of the Respondent.

Right of appeal explained.



B.R. NYAKI
DEPUTY REGISTRAR
17/12/2020