

IN THE HIGH COURT OF TANZANIA

AT TABORA

HC. MISC. CRIMINAL APPLICATION NO. 84 OF 2019

(Original Criminal no.152 of 2017 of the District Court of Nzega at Nzega)

SIMON STEPHANO APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

23 & 27/03/2020

BONGOLE, J.

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

The reliefs sought by the Applicant are that;-

1. That the honorable Court be pleased to grant an extension of time to lodge both the notices and petitions of appeals.
2. That the honorable Court be pleased to grant any other orders and reliefs that it consider just and convenient to grant.

The Applicant's application is supported by an affidavit deposed on by Simon Stephano.

The facts as deposed in the affidavit inter alia materially run;

1. That, he was convicted by the trial District Court of 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 term of thirty years (30) years in prison.

2. That, aggrieved by the decision of the trial court as a result he filed the notice of appeal to the High Court to show his intention on appeal within the prescribed time and he remained waiting a copy of judgment but it was not served until 24/7/2019.
3. That, after the time went on without given a copy of judgment he decided to lodge an application to lodge both notice of intention to appeal and the petition of appeal out of time pending copy of judgment and the said application was registered as No. 242 of 2017 and it was fixed for hearing before Hon. Mallaba J. and it was granted and ordered him to lodge notice of intention to appeal within ten days from the date of the ruling or from the date when he received a copy of judgment on 24/07/2019.
4. That, he prayed to be granted and allow him to lodge both notice of intention to appeal and petition of appeal which he lodge at that time it is bearded a tilted of RM court/District court, while the proper notice required to title to the High court and the District court where the impugned judgment was passed.

In this application, the Applicant appeared in person and whereby Mr. John Mkonyi, learned State Attorney appeared for the Respondent.

Mr. Mkonyi submitted that the applicant was granted the application and in the ruling at para 3 the court directed the applicant to lodge a notice of appeal before the trial court within 10 days from the date of the ruling

and petition of appeal within 30 days from the date of the order or the date he would receive a copy of the impugned judgment.

He added that para 5 of the applicant's affidavit he stated that he filled a notice of appeal within 3 days from the date of the ruling but he never attached the alleged notice in this application.

Further at para 5 the applicant states that he was given a copy of judgment and proceedings on 24/7/2019 the same is attached in the applicant's affidavit. Having received the same he was supposed to prepare his petition of appeal within 30 days but he did not do so and no any reasons assigned.

Finally he concluded that the applicant has contravene the order of the court of filling his petition of appeal within 30 days after he was supplied with a copy of proceedings and judgment. Therefore the applicant has failed to adduce good cause for his delay required by section 361 (2) of the criminal procedure act Cap. 20 R.E. 2002.

In reply, the Applicant submitted that the copy of judgment and proceedings were supplied to him late. He fall sick and transferred to Mwanza where the copy of judgment was sent to him while it was already late.

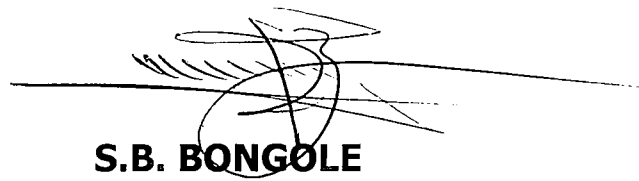
He added that, he don't have a copy of the notice of appeal nor a medical sheet from Bugando Hospital.

I have gone through the affidavit in particular the annexture being the notice of appeal that had been filed. It is apparent that the Applicant acted diligently in perusing his substantive right of appeal by presenting his notice

of intention to appeal. I am also satisfied with the reasons advanced by the applicant that the delay to file his appeal was caused by the failure of the trial court to supply him with necessary documents to file his appeal on time.

The extension of time is granted to the Applicant to file his notice of intention to appeal out of time within 10 (Ten) days and his appeal within 30 (Thirty) days from the date of this order.

Ordered accordingly

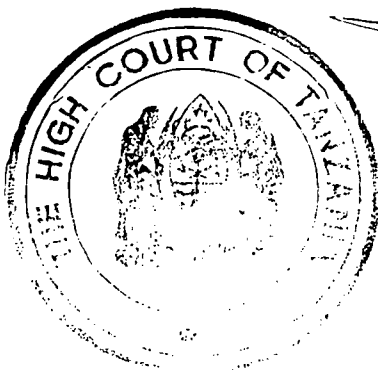


S.B. BONGOLE

JUDGE

27/03/2020

Ruling delivered under my hand and seal of the Court in chambers this 27/03/2020 in the presence of the Applicant in person and Mr. Tumaini Pius learned State Attorney for the Respondent.



S.B. BONGOLE

JUDGE

27/03/2020