

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

MISCELLANEOUS CRIMINAL APPLICATION NO. 14 OF 2020

(Originating from Criminal Case No. 240 of 2017, District Court of Morogoro dated 17th July, 2018)

SELEMAN BAKARI APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

26th Feb & 6th Mar 2020.

This is an application brought by the applicant under section 361(2) of the Criminal Procedure Act, [Cap. 20 R.E 2002] herein referred as CPA praying this Honourable Court to admit the appeal by extending time to file the Notice of Appeal and Petition of Appeal out of time. It has been supported by the sworn affidavit of **Seleman Bakari**, the applicant. The application has been protested by the respondent/Republic who filed a counter affidavit sworn by Ramadhani Kalinga, State Attorney.

The brief story of this matter as gathered from the applicant's affidavit is that, he was arraigned before Morogoro District Court for an offence of Rape contrary to section 130(1)(e) and 131(1) of the Penal Code,[Cap. 16 R.E 2002], found guilty of the offence, convicted and sentenced to serve (30) thirty years imprisonment on 17th day of July 2018. He was

thereafter taken to Morogoro prison on the same date and later transferred to Isanga Central Prison on 22/8/2018 where he has tirelessly been trying to protest his innocence through outdated appeal. It is from that background the applicant has accessed this court with the present application.

When the application was called for hearing before me on 26/02/2020 the applicant who appeared unrepresented argued his own application and the respondent was represented by Mr. Adolf Kisima, learned State Attorney. Under section 361(2) of the CPA, this court upon good cause shown by the applicant can admit the appeal notwithstanding that the period of limitation prescribed in this section has elapsed. The period prescribed for filing the notice of appeal is ten days and for lodging the petition of appeal is forty five days from the date of finding, sentence or order. Conviction and sentence in which the applicant is seeking to challenge by way of appeal in this court was entered on 17/7/2018. The issue now to be determined by this court is whether the applicant has good cause to warrant this court exercise its discretion to either grant the application or not.

It was applicant's submission that when convicted and sentence on 17/7/2018 upon entering Morogoro prison he expressed his intention to appeal to the prison authority, prepared a notice of appeal and submitted it to the officer in-charge of the prison for further legal steps. That before receiving copies of proceedings and judgment on 22/8/2018 he was transferred to Isanga central prison and continued to wait there until 5/7/2019 when the same were supplied to him and managed prepare the petition of appeal and submit it to the prison authority for filing in court. The applicant added that the prison authority had formerly informed him that his appeal was filed in this court before

sometimes later the story changed from the officer in-charge of Isanga informing him that he received information that his appeal went missing. From which source did the prison officer in-charge receive the information it is silent. He stated further that the delay was not caused by him for as a prisoner was depending on prison authority to have everything done for him and there is nothing more he could do to pursue his appeal timely. He concluded by praying this court to extend time so that his appeal could be admitted by this court.

Opposing the application Mr. Kisima learned State Attorney was of the view that the applicant was supposed to attach a copy of petition of appeal to prove to this court that he had actually prepared one allegedly missing because all prisoners' documents are prepared in triplicate. While admitting that it is the prison authority that keeps the said records, the applicant ought to have tendered the said petition as a proof that he prepared it failure of which this court will have no evidence to base on to consider his application he submitted. He therefore invited this court to find that the applicant has failed to advance reasonable reasons thus the application deserves dismissal for want of good cause. In response the applicant averred that what he knows and can clearly state is that he prepared the petition of appeal and handed it to the prison authority and he never heard anything concerning his appeal until 2019 when he was informed that his appeal went lost though he retained no copy. He insisted that the process of lodging it in court was out of his control and the prison authority should be asked for proof when it was filed in court.

As stated earlier this court has discretion to grant the application upon good cause established by the applicant. What amounts to good cause is left in the hands of court's unfettered discretion basing on the

circumstances of the case. See **Meis Industries Limited & Ors v Twiga Bankcorp (Misc Commercial Cause No. 243 of 2015) [2016] TZHCComD 17.**

The applicant in this application submitted that he presented the documents i.e. the notice of appeal and petition of appeal to the prison authority that processed them and waited to hear again from them of his appeal status only to be informed that the said documents went missing. Despite of his concession that all prisoners documents are kept by the prison authority Mr. Kisima is challenging the applicant's application in that he was supposed to attach the alleged petition of appeal. With due respect to the learned State Attorney I think what the applicant was supposed to do and actually did as a prisoner was in compliance with the provisions of section 363 of the Criminal Procedure Act, [Cap. 20 R.E 2002]. For the purpose of clarity it is instructive that I reproduce it hereunder:-

S.363. If the appellant is in prison, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the prison, who shall thereupon forward the petition and copies to the Registrar of the High Court.

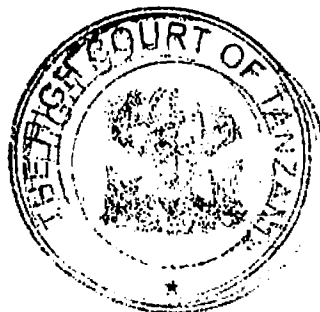
What the appellant who is in prison is required of after preparing his petition of appeal and its annexures is to present them to the officer in - charge of the prison for him to forward them to the Registrar of the High Court. The rationale behind that requirement is not far from fetching. Being a prisoner at all time his movements are restricted. He cannot therefore be expected to move outside the prison to file the said documents on his own apart from relying on prison authority's efforts. In my opinion this is what befell the applicant in which the court has no

documents on his own apart from relying on prison authority's efforts. In my opinion this is what befell the applicant in which the court has no reason to disbelieve his story. I am saying so because it is the Isanga central prison authority that certified the applicant's affidavit and stamped it with the prison officer in-charge's stamp stating that the grounds set forth in that affidavit were prepared and submitted by the applicant at the office on 15/01/2020. To me this is a confirmation that even the information contained therein with regard to the submission of the petition of appeal for the purposes of presenting it to this court were true, thus a confirmation that the said petition of appeal was actually presented to the authority. The question as to whether the same was submitted to this court or not is not in the applicant's position to know. Under the circumstances I am of the views that the applicant had nothing to do than to wait only to find that the time to file his appeal has expired, the reason which to me constitutes good cause. The issue is therefore resolved in affirmative.

In the circumstances and for the foregoing reasons I would allow the application and extend time within which to file notice of appeal and the petition of appeal as I hereby do. Given the fact that the applicant is in prison he is directed to file the notice of appeal within (10) ten days and the petition of appeal within (45) forty five days from the date of this ruling.

It is so ordered.

DATED at DAR ES SALAAM this 6th day of March, 2020.

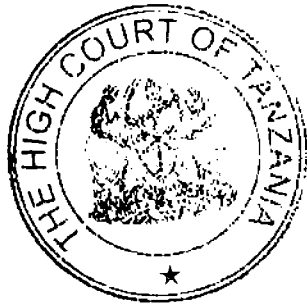


E. E. KAKOLAKI

JUDGE

06/03/2020

Ruling delivered today on 6th day of March, 2020 in the presence of the applicant and Ms. Debora Mcharo State Attorney.




E. E. KAKOLAKI

JUDGE

06/03/2020