

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

MISCELLANEOUS CRIMINAL APPLICATION NO.25 OF 2020

(Originating from Criminal Case No. 265 of 2019 of Kilombero District Court at Ifakara)

WILSON REUBEN -----APPLICANT

VERSUS

THE REPUBLIC-----RESPONDENT

RULING

Date of last Order: 06/03/2020

Date of Ruling: 06/03/2020

E. E. Kakolaki, J

This is an application by the applicant brought under Section 361(2) of the Criminal Procedure Act, [Cap. 20 R.E. 2002] seeking for extension of time within which to file a Notice of Appeal to this court out time to challenge the decision of the District Court of Kilombero at Ifakara dated on 24/10/2019 before Hon. **L. O. KHAMISINI-RM.** He has

supported the application by the affidavit sworn in the name of **WILSON REUBEN**.

What discern from the applicant's affidavit is that he was arraigned before the Kilombero District Court at Ifakara facing a charge of rape Contrary to section 130(1) and (2) (e) and 131(1) of the Penal Code [Cap. 16 R.E. 2002], convicted of the offence and sentenced to (30) thirty years imprisonment. Aggrieved with the said decision on the 25/10/2019 the applicant issued a Notice of Appeal intending to challenge the decision of the Kilombero District Court to this court. The notice was prepared by the Prison authority and presented to him for signature only before it was filed in Kilombero District Court.

After sometime it was noted that the said Notice of Appeal bore a wrong heading at it was titled **IN THE DISTRICT/RESIDENT MAGISTRATE COURT OF KILOMBERO** at **IFAKARA** instead of **IN THE HIGH COURT OF TANZANIA** the error which is fatal as it rendered the intended appeal incompetent for want of proper notice of appeal.

It is from that reason the applicant found himself time barred to re-file a new and proper Notice of Appeal, thus a present application.

This court under S. 381(1) of the Criminal Procedure Act, [Cap. 20 R.E. 2002] upon good cause has powers to extend time within which to file Notice of Appeal as prayed by the applicant. The issue for determination before me therefore is whether the applicant has advanced good cause to warrant this court extend him time within which to file the Notice of Appeal out of time. The applicant has stated that the Notice was prepared by the Prison Authority and presented to him for his signature. The error on citation of the court title in the said notice was out of his control he submitted. He only came to know later that this notice was defective hence this timely application. The application has not been contested by the Respondent through Ms. **MCHARO** learned State Attorney.

I have considered the reason advance by the applicant to account for his delay to file the notice of Appeal. In deed I am convinced that it amounts to good cause as the error committed by the Prison Authority inserting the wrong citation of the court title in his Notice of Appeal was out of his control to manage. He therefore on his part acted diligently by appending his signature and let it all in the hands of the Prison Authority to process. To condemn him for such error in my opinion will be going against the interest of justice. I am therefore satisfied that good cause has been established by

the applicant to warrant this court extend time within which to file the appeal out of time as prayed.

In the circumstances and for the foregoing reason, I am inclined to grant the application by extending time for the applicant to file the Notice of Appeal out of time. The said notice to be filed within 10 days from the date of this ruling.

It is so ordered.

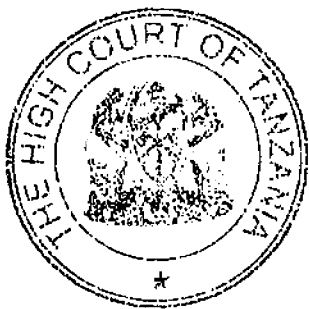



Sgd: E. E. Kakolaki

JUDGE

06/03/2020

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




E. E. Kakolaki

JUDGE

06/03/2019