

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 15 OF 2021

(C/O Mlele DC Criminal Case No. 14 of 2017)

RICHARD S/O CHAMBANENJE APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

Date: 26 & 29/07/2021

RULING

Nkwabi, J.:

The applicant is seeking extension of time to enable him to file notice of intention to appeal out of time. The application is made under section 361(1) (a)(b)(2) and Section 392A (1)(2) of the Criminal Procedure Act Cap 20 RE 2019. The chamber summons is supported by the applicant's affidavit.



In the affidavit, the applicant averred that he failed to write a notice of intention to appeal in time since as soon thereafter he was sentenced he was transferred to Mpanda Remand Prison and consequently to Kalila Nkulukulu prison while he does not know the procedure of writing notice of intention to appeal. The geographical location and economic hardship further delayed him taking action. He got assistance from advocate Sweetbert Alphonse Nkumpolo who visited him during Law week on 26th January, 2021.

The judgment of the trial court was delivered on 04th October, 2019 in the District Court of Mlele. The applicant was convicted and sentenced to 30 years imprisonment for the offence of rape he had stood charged with. The Respondent, (Republic) in this application was impressed with the application forwarded by the applicant to this court. For that end, the respondent did not file any counter affidavit. The same resonated during the hearing where Ms. Safi Kashindi, Learned State Attorney, told the court that they do not object the application for extension of time to file notice of intention to appeal.



I have carefully considered this application. The application is not contested by the Respondent, and in the circumstances I have to follow the decision in **Mosses Ndosi v Suzana Ndosi, Misc. Land application no 117 of 2013** S. Moshi, J. was cited with approval in the case of **Emmanuel Gidahotay v Gambanyashita Muhale Misc land application no 41 of 2017** Maige, J. As he then was: *"that failure to file a counter affidavit is a signification that the application is not factually opposed"*.

In the circumstances of this application, as it is unopposed, I remain with only one option and this is granting the application for extension of time within which the applicant could lodge his notice of appeal. Seven days' extension of time is granted to the applicant within which to lodge his notice of appeal. Time shall start running starting from 30th day of July 2021.

It is so ordered.

Dated at Sumbawanga this 29th day of July, 2021.




J. F. Nkwabi

JUDGE

Court: Ruling delivered in chambers this 29th day of July 2021 in the presence of Mr. Safi Kashindi, learned State Attorney for the Respondent (The Republic), and the applicant present in person.



J.F. Nkwabi

JUDGE