

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MBEYA DISTRICT REGISTRY

AT MBEYA

MISCELLANEOUS CRIMINAL APPLICATION NO. 8 OF 2020
*(Originating from Criminal Case No. 14 of 2019 in the court of the
Resident Magistrate of Mbeya)*

Between

EDWIN ALLY APPLICANT

VERSUS

THE DPP..... RESPONDENT

RULING

08 & 09/11/ 2021

A.A. MBAGWA, J.

This application originates from Criminal Case No. 14 of 2019 in the Court of Resident Magistrate of Mbeya in which the applicant was tried and convicted of rape contrary to section 130(1)(2)(e) and 131(1) of the Penal Code [Cap. 16 R.E. 2002]. He was consequently sentenced to life imprisonment. Aggrieved by both conviction and sentence, the applicant filed an appeal to this court and the same was registered as Criminal Appeal No. 83 of 2019. However, the appeal did not proceed to hearing as it was adjudged to have been filed out of prescribed time by the ruling of this Court (Hon. Utamwa J.) dated 12th December, 2019. Following that ruling, the applicant herein has brought this application by way of chamber summons supported by affidavit. The chamber summons is



made under section 361(2) of the Criminal Procedure Act. The applicant prays this Court to grant him one, extension of time within which to lodge notice of appeal and petition of appeal and two, any other orders which the Court may deem fit and just to grant.

The applicant averred in his affidavit that he was convicted and admitted at Ruanda prison where he expressed his intention to appeal as per requirement of the law. He added that the application(sic) was struck out for being incompetent and therefore he was advised to file a fresh application.

When this application came for hearing, the applicant appeared in person unrepresented while the respondent was represented by Sara Anesius, the learned State Attorney.

The applicant submitted that he was lately supplied with copies of proceedings and therefore prayed the court to grant him extension of time within which to file a notice of intention to appeal and petition of appeal. The respondent DPP, did not object the application.

I have perused the chamber summons and annexed documents namely, judgment of the trial court dated 18th & 27th May, 2019 and ruling of this Court dated 13th December, 2019 Criminal Appeal no. 83 of 2019. It is on record that the applicant filed notice of intention to appeal in time but



he was late to file his appeal as copies of proceedings and judgment were not supplied to him in time. When the applicant filed Criminal Appeal no. 83 of 2019, forty five days provided by section 361(1)(a) of the Criminal Procedure Act Cap. 20 R:E 2002 had already expired. Thus, when the appeal was struck out for being filed out of time even notice of intention to appeal which he had filed earlier on followed the suit.

It is now settled position that in determining an application for extension of time, the court may take into account various factors including; the length of delay involved, reasons for delay, the degree of prejudice, if any, that each party is likely to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal. See the case of **Jaliya Felix Rutihwa Vs Kalokola Bwasha & another, Civil Application No. 392 of 2020, CAT at Dar-es-salaam.**

Having assessed the circumstances in this case, it is my considered view that no prejudice would be occasioned to the respondent/Republic should the application be granted. Furthermore, considering the fact that the applicant is seeking to challenge the decision in which he was convicted and sentenced to serve a life imprisonment, it goes without



say that the constitutional right to appeal outweighs the interest of the Republic in whose favour decision of the trial court was made.

In view of the above and taking into consideration the fact that this application was not contested, I am of the firm view that the applicant has managed to show good cause warranting this court to grant extension of time.

In the end I, find the application meritorious and proceed to grant extension of time to the applicant within which to file notice of intention to appeal and petition of appeal. The applicant is required to lodge notice of intention to appeal and the petition of appeal within thirty (30) days from the date of delivery of this ruling.

It is so ordered.

Right of appeal fully explained.



A handwritten signature in blue ink, appearing to read "A.A. Mbagwa".

A.A. Mbagwa
Judge
09/11/2021

Court: Ruling delivered in the presence of the applicant and Sara Anesius State Attorney for the respondent this 9th day of November, 2021.

A handwritten signature in blue ink, appearing to read "A.A. Mbagwa".

A.A. Mbagwa
Judge
09/11/2021