

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

AT MBEYA

MISC. CRIMINAL APPLICATION NO. 48 OF 2021

*(Originating from Criminal Case No. 100 of 2017 in the District Court  
of Rungwe at Tukuyu)*

NSAJIGWA WILFRED MWAKILASA ..... APPLICANT

Versus

THE REPUBLIC ..... RESPONDENT

**RULING**

01/11/2021 & 02/11/2021

**A.A. MBAGWA J,**

This is an application for extension of time within which to lodge a notice of intention to appeal and petition of appeal out of time. It is made by way of chamber summons under section 361(2) of the Criminal Procedure Act and supported by the applicant's affidavit. The application stems from Criminal Case No. 100 of 2017 in the District Court of Rungwe at Tukuyu.

The applicant herein was charged, tried and convicted of rape contrary to sections 130(2)(e) and 131(1) of the Penal Code by the District Court of Rungwe. Consequently, he was sentenced to serve a jail term of thirty (30) years.

He was not satisfied with the findings and sentence imposed by the trial District Court. However, the applicant belated to lodge the necessary documents for appeal. He thus, filed an application for extension of time



before this Court (Hon. Mambi, J.) in which he was allowed to file the appeal within twenty one (21) days from the date of the ruling.

Astonishingly, the applicant still belatedly filed his appeal i.e. Criminal Appeal No. 33 of 2019 two months after the expiry of twenty one (21) he was granted. As such, this Court (Hon. J.H.K. Utamwa, J.) struck it out with the advice to the applicant to re-apply for extension of time if he still wished to do so.

It is against this background, the applicant has brought the present application.

The applicant states, in his supporting affidavit, that immediately after his conviction and sentence, he was imprisoned in Tukuyu-Rungwe prison but shortly thereafter he was transferred to Ruanda Central Prison at Mbeya. As such, it became cumbersome for him to get the judgment and proceedings from Rungwe District Court within the prescribed time. The applicant further states that the causes of delay were beyond his control.

The respondent/Republic filed a counter affidavit sworn by Hannarose Kasambala, a State Attorney in the National Prosecutions Service at Mbeya. The respondent resisted the application stating that the applicant was granted extension of time by this Court but hopelessly failed to file the appeal within the time granted thereby leading to striking out of Criminal Appeal No.33 of 2019.

When this application came for hearing, the respondent was represented by Hannarose Kasambala, learned State Attorney, on the one side and the applicant was present in person, on the other side.



The applicant had no much to submit rather he adopted his affidavit to form part of the hearing and finally beseeched this Court to allow the application.

Conversely, the respondent opposed the application. Ms Kasambala submitted that the applicant was once granted extension of time but for no reasons he failed to file the appeal within time. The learned State Attorney continued to submit that the applicant did not, in the affidavit, demonstrate the reasons why he failed to file the appeal within twenty one (21) days that he was granted by the Court. The State Attorney concluded that the applicant had no good cause to warrant extension of time. However, on being probed by the Court, the State Attorney admitted that no prejudice would be occasioned on its part should this Court grant the application.

Having gone through the depositions and submissions by both parties, the pivotal issue for determination is whether the applicant, in this case, has demonstrated good cause for this Court to grant him extension of time.

It is common cause that there is no decisive definition of what a good cause is. The Court invariably takes in to account various considerations to arrive at the conclusion whether the applicant has a good cause. In the case **Jalia Felix Rutihwa vs Kalokola Bwasha & Another, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam** the Court of Appeal held that in determining a good cause the Court may take into account various factors including length of delay involved, reasons for delay, the degree of prejudice, if any, that each party is likely to suffer and the conduct of the parties.

From the record, it is undisputed that the applicant was convicted by the District Court of Rungwe at Tukuyu but presently he is serving his sentence at Ruanda prison. This tells it all, as the applicant contends, that he must



have encountered difficulty in obtaining the necessary documents for appeal records from the District Court of Rungwe.

Furthermore, I have considered the severity of sentence (thirty years imprisonment) he is serving vis a vis the prejudice that is likely to be occasioned on the other side if the application is granted. Luckily, the State Attorney assured the Court that there would be no prejudice, should the Court grant extension of time to allow the applicant to file his appeal.

In addition, I have noted that the delay is not inordinate. The copy of the ruling in Criminal Appeal No. 33 of 2019 which was struck out by this Court was served on the prison office on 25/06/2021 and on 30/06/ 2021 the applicant filed the present application in Court.

On the foregoing account and while alive to the overriding objective principle which in essence echoes on substantive justice, it is my findings that the applicant, in the circumstances of this case, has demonstrated good cause to grant him extension of time in terms of section 361(2) of the Criminal Procedure Act. The applicant deserves to be given the second chance to pursue his basic right of appeal.

In the upshot, I find this application with merits and consequently allow it. The applicant therefore is given thirty (30) days from the date of delivery of this ruling to file the notice of intention to appeal and petition of appeal.

It is so ordered.

The right to appeal is fully explained



  
**A.A. Mbagwa**  
Judge  
01/11/2021

This ruling has been delivered in the presence of the applicant and Hannarose Kasambala, learned State Attorney for the Republic/respondent this 2<sup>nd</sup> day of November, 2021.



**A.A. Mbagwa**  
**Judge**  
**02/11/2021**