

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISCELLANEOUS CRIMINAL APPLICATION NO. 27 OF 2022

(C/O Mlele District Court Criminal Case No. 157 of 2016)

(Swai, T., RM)

FESTO S/O JOSEPH APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date: 11 & 12/07/2022

NKWABI, J.:

The applicant in this application was sentenced to life imprisonment for unnatural offence against a child aged below 10 years. The offence charged was as per section 154 (1) (a) (2) of the Penal Code, Cap. 16 R.E. 2002. That was after his own plea of guilty when the charge was read over and explained to him.

His attempt to appeal before this Court crashed after this Court ordered that his DC. Criminal Appeal No. 48 of 2021 be struck out for being time barred. He thus, has come to this Court before me under section 361(1) of the Criminal Procedure Act, Cap 20 R.E. 2019. He is asking for an

extension of time within which to lodge a notice of intention to appeal and a petition of appeal to this Court.

The application is founded on the reason that just after his imprisonment over the offence he intends to appeal against, he was transferred from Mpanda remand prison to Uyui prison in Tabora region. There he spent some times then transferred to Sumbawanga remand prison. It is because of such transfers, the applicant contents, he delayed to lodge the notice of intention to appeal and ultimately the delay to lodge his petition of appeal to this Court. The officer in-charge of Sumbawanga Prison certified the applicant's application in as far as the prison transfers are concerned.

Ms. Marietha Maguta, learned State Attorney, who appeared for the respondent supported the application. She stated that they do not object because his appeal was filed outside the time and it was dismissed. She urged it be granted. The applicant did not have anything to add as a rejoinder to his submission in chief.

Despite the fact that the respondent did not object the application, I would have not granted the application had it been not that the proceedings of the trial court are not seemingly flawed for being ambiguous. The

proceedings of the trial court in the circumstances seems to have illegality on the face of the record warranting this court to extend the time within which to file the intended notice of intention to appeal to this court.

As I said, I would have rejected the application since the applicant ought to have lodged his intention of appeal to the High Court within seven days from the date of his conviction. It is inconceivable that the prison authority at Mpanda transferred him before he exercised his right to lodge the intention of appeal. If that were the case then, there is high irresponsibility on the party of the Prison officer in-charge of Mpanda prison. I cannot however condemn him because, the affidavit that is sworn by the Prison Officer In-charge is that of the in-charge of Sumbawanga prison, a third prison in the row. That is unacceptable as he could have not known what transpired in Mpanda prison, else he ought to have indicated from who such information he obtained.

It is mundane law that a delay of even a single day has to be fully explained, see **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 192/20 of 2016 CAT (unreported) where it was held:

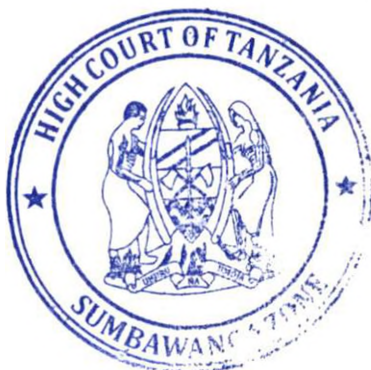
"... Delay of even a single day has to be accounted for otherwise, there would be no point of having rules prescribing periods within which certain steps have to be taken."


The applicant ought to have demanded that he be transferred after he files his notice of intention to appeal. He cannot claim that he was ignorant of that and be heard because ignorance has never featured as a good ground for extension. See **Ally Kinanda & 2 Others vs. The Republic, Criminal Application No. 1/2016**, CAT, (unreported).

The above said and done, this application is merited. It is granted. The applicant is given seven days within which to file a notice of intention to appeal. The seven days shall start running from the date of this ruling. He is also given 45 days which start to run from the date of this ruling as well.

It is so ordered.

DATED at **SUMBAWANGA** this 12th day of July 2022




J. F. NKWABI
JUDGE