

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA

MISC. CRIMINAL APPLICATION NO. 45 OF 2021

(Arising from the Resident Magistrate Court's of Bukoba at Bukoba in Criminal Case No. 36 of 2019)

BYENSI EMMANUEL----- APPLICANT

VERSUS

THE REPUBLIC-----RESPONDENT

RULING

Date of Ruling: 01/03/2022

Mwenda, J.

Before this court is the application for extension of time to file notice of intention to appeal and appeal out of time. It is brought under section 361(2) and 392A (2) of the Criminal Procedure [CAP.20 R.E 2019]. It is also supported by an affidavit sworn by the applicant.

During the hearing of this application the applicant appeared in person while the respondent (Republic) was represented by the learned Senior State Attorney Mr. Mwasimba.

When invited to argue in support of his application the applicant submitted that he has nothing to add and prayed for this court to consider the contents of his affidavit while making its decision.

The respondent republic did not oppose this application. Mr. Mwasimba, senior state attorney submitted that, having gone through the applicant's application

and the reasons for the delay as covered in the affidavit, he is satisfied that there are sufficient reasons to grant extension of time to file a notice of intention to appeal and grounds of appeal out of time. He thus prayed this application to be granted.

Having heard the submissions by both parties, the issue is whether the applicant has advanced good reasons for the delay.

From the records the applicant through his affidavit stated that after he had prepared notice of intention to appeal and appeal, he forwarded the said documents to the prison admission office for filing purpose before the High Court's registry. He also stated that surprisingly during the hearing before the high court he was informed that the notice of intention to appeal is nowhere to be seen on court records hence his appeal was struck out, he concluded by submitting that the delay was not caused by his conduct. He then prayed to be granted extension of time so as to file notice of intention to appeal and appeal out of time.

Having gone through the affidavit, this court noted that the same is certified by the officer in charge of Bukoba prison. The said certification reads as follows and I quote:-

"I do hereby certify that this application and affidavit have been drawn and signed by the applicant residing in this Bukoba prison under my

inspection. Certified at Bukoba prison on this 06th

September 2021. (sic)

Signed

OI/C Bukoba Prison

Since this affidavit is certified by the officer in charge of Bukoba Prison, this court therefore is of the view that what is stated in affidavit is nothing but the truth and therefore the delay was out of the applicant's control. That being the case, this court finds merits in the applicant's application and the prayers craved are hereby granted.

The applicant is thus ordered to file notice of intention to appeal and memorandum of appeal within 21 days from the date of this ruling.

It is do ordered.




A.Y. Mwenda

Judge

01.03.2022

This ruling is delivered in chamber under the seal of this court in the presence of the applicant Mr. Byensi Emmanuel and in the presence of the learned state attorney Mr. Mwasimba senior state attorney for the republic.




A.Y. Mwenda

Judge

01.03.2022

