

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MOROGORO)
AT MOROGORO**

MISC. CRIMINAL APPLICATION NO. 18 OF 2022

(Arising from Criminal Case No. 14 of 2020 in the Resident Magistrate
Court of Morogoro)

SADICK HAMAD NDIUNZE APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Hearing date on: 20/06/2022

Ruling date on: 24/06/2022

NGWEMBE, J:

The applicant is seeking extension of time to lodge petition of appeal out of time. His application is made by way of chamber summons supported by an affidavit affirmed by himself. The contents of his affidavit indicate that he was charged with an offence of rape contrary to sections 130 (1) (2) (e) and 131 of **the Penal Code [Cap 6, R.E 2019]** upon being convicted he was sentenced to life imprisonment. After being so convicted and sentenced, he realised that he has right to appeal to this court. Unfortunate when he ventured to appeal against that conviction and sentence, alas, time limitation was not in his favour. Thus, preferred this application for extension of time.



The reason for his delay, is rightly disclosed in paragraphs 4, 5 and 6 of his affidavits. In brief he stated that the Prisons Authority

transferred him from Morogoro Prison to Ukonga Central Prison. Also, Morogoro Prison delayed to supply him with the necessary copies of proceedings and judgement to enable him to prepare the required documentations for appeal. Thus, justified that his delay was not due to his indolence, but because of circumstances out of his control.

On the hearing of this application, the applicant appeared in person through Video Conference, while at Ukonga Prison, and the Republic was represented by Ms. Jamila Mziray, learned State Attorney. The applicant did not submit anything viable rather, he reiterated the contents of paragraphs 3, 4, 5 and 6 of his affidavit. Added that, he once engaged an advocate who failed to act on time, thus prayed the application be granted, so that, he may exercise his right to appeal to this court against his conviction and sentence.

In turn the learned State Attorney conceded to the application and urged the court to exercise its powers on the extension of time.

It is well – known, powers to extend time is vested to the discretion of this court, same is exercised upon good cause or sufficient cause being shown. Rightly noted in this application that the applicant being a lay person and being in prison or on whatever reasons, he did not cite any enabling provision in his chamber summons. Notwithstanding that shortfalls, this court still has powers to extend time under section 361 (2) of **Criminal Procedure Act, [Cap 20, R.E 2019]**. The section is quoted hereunder: -

"The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed."

Considering deeply on the facts deposed in the affidavit in support of the chamber summons, I find that the applicant filed his notice of intention to appeal on 14th day of April, 2021 equal to one day after the judgment.

Again, I am satisfied that the appellant would not succeed to file his appeal within time under the circumstance of being transferred from Morogoro Prison to Ukonga Prison without obtaining the necessary documents, that is, judgement and proceedings. That reason constitutes a sufficient cause for that delay.

Accordingly, I proceed to grant extension of time, the applicant may actualize his intention to lodge his appeal within 20 days from the date of this ruling.

I so order.

DATED this 24th day of June, 2022.



P.J. NGWEMBE
JUDGE
24/06/2022

Court: Ruling delivered in chambers on this 24th day of June, 2022 in presence of the applicant in person through Video Conference while at Ukonga Prison and in the presence of Jamila Mziray learned State Attorney for Republic.



P. J. NGWEMBE
JUDGE
24/06/2022