

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISC. CRIMINAL APPLICATION NO. 101 OF 2021

(Arising from Criminal Case No. 101 of 2018 of the District Court of Kongwa)

DANIEL MASINGA..... APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

15/06/2022 & 06/07/2022

Before this Court, the applicant DANIEL MASINGA prays for extension of time to file notice of appeal out of time against the decision delivered on 13th day of May, 2019 by the District Court of Kongwa in Criminal Case No. 36 of 2017. The applicant further prays for extension of time to file petition of appeal and any other relief that this Court will deem fit to grant.

The applicant's application has been brought under section 361(2) of the Criminal Procedure Act, [Cap 20 R.E 2019] and supported by the affidavit sworn by the applicant.

The applicant's affidavit has deposed the reasons for the application stating that after applicant's conviction by the District Court of Kongwa for the offence of rape contrary to S. 130(1)(2)(e) & 131(1) of the Penal Code, [Cap 16 R.E 2019] he intimated his intention to appeal to the Prison

Officer Incharge. Therefore, he was assisted with all relevant documents to pursue his intention. Thereafter he succeeded to prepare notice of appeal and handed it to the prison authority who told him that they will submit it to the Court. Unfortunately on 23rd day of September, 2020 when the appeal was scheduled for hearing before Hon. G. D. Dudu, PRM (Extended jurisdiction) the same was struck out because there was no notice of appeal.

The applicant further states that after the struck out of his appeal, he filed a notice to appeal out of time but the same got lost thus he lodged this application.

When the matter was called on for hearing, the applicant appeared in person and sought the Court to adopt his affidavit as his submission in support of the application. In reply, the Republic being the respondent was represented by Ms. Judith Mwakyusa, the learned Senior State Attorney who supported the applicant's application.

Ms. Mwakyusa submitted that the reasons adduced by applicant are satisfactory and therefore prayed this Court to grant the applicant's application.

The issue for determination by this Court is whether the applicant's application has merit. Section 361(2) of the Criminal Procedure Act, [Cap 20 R.E 2019] provides for powers of the Court to the extend time upon

sufficient reasons. Therefore, it is the duty of this Court to satisfy itself if the applicant's reasons for extension of time are sufficient.

The Court has gone through the applicant's affidavit and found that the reasons adduced by the applicant are sufficient as rightly conceded by the learned Senior State Attorney.

The applicant through his affidavit has shown how he tried to pursue his right to appeal but the subsisting environment of him being a prisoner initiated the delay. In normal circumstances, a prisoner will depend on prison authority for access to Courts or any authority. In such circumstance it becomes difficult to a prisoner to make follow up of anything to a specific authority or to Court having entrusted it to the prison authority.

Moreover, the appeal was struck out for what is termed a technical delay as per **Fortunatus Masha V William Shija and Another (1997) TLR 154** where the Court of Appeal insisted on distinction between real/actual delay and technical delay particularly where the original appeal was lodged in time but situation arose which rendered it incompetent and a fresh appeal has to be instituted.

This is the same to this matter at hand where the applicant lodged his appeal on time and the same was scheduled for hearing in the Resident Magistrate's Court of Dodoma in its extended jurisdiction before

honourable G. V. Dudu, PRM but the same was found untenable for not being accompanied with notice of appeal. Consequently, the Court struck out the appeal.

In addition, the applicant has contended that after the struck out of appeal he filed an application for extension as this one but the same got lost. This also shows how the applicant did take quick measures to ensure that his right to appeal does not flop.

Therefore, this Court is satisfied that the applicant application has merit and hereby granted. The applicant to lodge notice of appeal and a petition of appeal within 30 days from the date of this ruling.

Ordered accordingly.

DATED at DODOMA This 06th Day of July, 2022



Abdi S. Kagomba
ABDI S. KAGOMBA

JUDGE