

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA DISTRICT REGISTRY

AT SONGEA

MISCELLANEOUS CRIMINAL APPLICATION NO. 11 OF 2022

(Originating from Criminal Case No. 67 of 2022 Tunduru District Court)

ALUSI KILAMBO MAO.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

Date of last order: 14/07/2022

Date of Ruling: 14/07/2022

MLYAMBINA, J.

This is an application for extension of time within which the Applicant can lodge notice of appeal and appeal out of time. The application is made by way of chamber summons under *Section 361 (1) (a) and (b), (2) of the Criminal Procedure Act [Cap 20 R.E. 2019]* and it is supported with the affidavit of Alusi D/O Kalambo, the Applicant. The affidavit and the oral submission in support of the application was based on one major reason that the applicant was retained and detained at Tunduru Prison for which her freedom was totally curtailed.

It was deposed by the Applicant that the impugned decision was delivered on 25th April, 2022 for which she was convicted and sentenced to suffer three years imprisonment. Thus, the delay to file notice of appeal on time was further attributed by the District Court which failed to avail her with the copy of judgement in a timely manner.

When probed by the Court as to why she did not orally raise her notice of appeal, the Applicant answered that at the time the decision was delivered, she had not intended to appeal. She started to make follow up of her appeal seven days later.

On 14th July, 2022 when the application came for hearing learned State Attorney Frank Chonja objected the application on major reason that the applicant did not advance sufficient reason warranting her extension of time.

As replied by learned State Attorney Frank Chonja, under *Section 359 (1) of the Criminal Procedure Act [Cap 20 R. E. 2022]*, the Applicant had the right to appeal. She could have given her notice of appeal orally. But as she stated, the Applicant had no intention to appeal. She started to make follow up of her appeal seven days later. As per *Section 361 (1) (a) of the Criminal Procedure Act (supra)*, the notice of appeal which initiates an appeal must be issued within ten days from the date the impugned decision was issued.

There are no good explanation as to why the Applicant remained silent from 25th April, 2022 to 1st June, 2022 when she lodged this application.

I also agree with the Republic that the notice of appeal is issued regardless of the Applicant been availed with the copy of the impugned decision of proceedings. in other words, the copy of decision and proceedings are not the preliquisite condition of filing notice of appeal.

In the event, the application stands dismissed for lack of merits. Order accordingly.



Y. J. MLYAMBINA
JUDGE

14/07/2022

Ruling delivered and dated 14th day of July, 2022 in the presence of the Applicant in person and learned State Attorney Frank Chonja for the Respondent.



Y. J. MLYAMBINA
JUDGE

14/07/2022