

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MWANZA SUB-REGISTRY)**

**AT MWANZA**

**MISC. CRIMINAL APPLICATION NO. 14/2022**

*(Originating from Criminal Case No. 373 of 2017 from Chato District Court at Chato)*

**DEUS JUMA.....APPLICANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**RULING**

**1<sup>st</sup> & 2<sup>nd</sup> August, 2022**

**DYANSOBERA, J.:**

The applicant Deus Juma is a convict prisoner serving a sentence of thirty (30) years term of imprisonment upon conviction on his own plea for the offence of rape c/ss 130 (1) (2) (e) and 131 of the Penal Code [Cap. 16 R.E.2019] in Criminal Case No. 373 of 2017 before the District Court of Chato at Chato. It appears, the appellant soon after being sentenced on 20<sup>th</sup> day of April, 2018, he filed neither his Notice of Intention to Appeal nor a Petition of Appeal. It is not until on 5<sup>th</sup> April, 2022 when he filed this application for extension of time in which to file his Notice of Intention to Appeal to this court.

In his sworn affidavit, the applicant avers the following:-

## **AFIDAVIT**

*I DEUS JUMA, Adult, Male, Christian and Tanzanian held in Kitai Prison. Do here by swear and state as follows:-*

- 1. That, I am the applicant in this application for extension of the time within which to lodge notice of appeal to the High Court of Tanzania at Mwanza out of the time.*
- 2. That, my right of appeal is not only statutory but also constitutional right in Tanzania.*
- 3. That, this Honorable High Court has a legal power to extend the time within which to lodge Notice of Appeal to High Court of time.*
- 4. That, I am a prisoner who depend on everything to the prison Administration so the delayment happen it was beyond my control.*

At the hearing of this application, the applicant stood on her own, unrepresented whereas Mr. Deogratias Richard Rumanyika, learned State Attorney, represented the respondent Republic.

Arguing in support of the application, the applicant told this court that he was imprisoned at Chato and later transferred to Bukoba. He was then brought to Butimba and was further transferred to Kitale Prison, in Ruvuma Region and that it is due to these transfers that he failed to lodge his Notice of Intention to Appeal.

Resisting the application, the learned State Attorney argued that the application has no merit. According to him, the applicant has failed to account for the whole period he delayed in filing the Notice of Intention to Appeal. Further that his argument in the affidavit that he is a prisoner and depended everything on Prison Administration is not a sufficient cause particularly where there is no an supplementary affidavit from prison authorities supporting his argument. The learned State Attorney cited the case of **Salum Athman v. R**, Criminal Application No. 120 of 2020 on the authority that extension of time will be granted where the offers ground and accounts for each delay. Mr. Deogratias prayed this application to be dismissed.

I have considered the application, the affidavit supporting it and the rival submissions. I have also taken into account the legal provisions and case of **Salum Athman v. R**, Criminal Application No 120 of 2020 referred to me by the learned State Attorney.

There is no doubt that this application has been filed under section 361 (2) of the Criminal Procedure Act [Cap. 20 R.E.2019]. Section 361 (1) and (2) of the Criminal Procedure Act, provides that: -

'361.

(1) Subject to subsection (2), no appeal from any finding, sentence or order referred to in section 359 shall be entertained unless the appellant—

(a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and

(b) has lodged his petition of appeal within forty-five days from the date of the finding, sentence or order, save that in computing the period of forty-five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded.

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

It is trite law that when considering an application such as the one before me, I have discretionary powers to either grant or refuse the

extension but the discretion must be exercised judicially i.e., upon good reason.

The issue now is whether the ground adduced in the applicant's affidavit and the submission in support of the application constitute good cause for extension of time.

The main ground advanced by the applicant in his affidavit is as reflected under paragraph 4 of his affidavit that: -

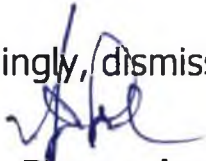
*'4. I am a prisoner who depend on everything to the Prison Administration so that the delay that happened was beyond my control'*

Going by the record, there is no dispute that the applicant is not only a layman but also a convict prisoner. Undoubtedly, his processing of the appeal is facilitated by the prison authorities. However, there is nothing shown by the applicant either in his affidavit or oral submission that he attempted to engage the prison authorities to file the necessary legal documents soon after he was incarcerated in prison. It is true, as submitted by the learned State Attorney, the fact that the applicant is a prisoner is not a good cause particularly where such argument has not been backed up.

Besides, as the record shows, the applicant was convicted and sentenced by the trial District Court on 20<sup>th</sup> April, 2018. He filed this application for extension of time on 5<sup>th</sup> April, 2022. There is unexplained inordinate delay of almost four years from the from the date of the sentence to the date of filing this application. The applicant has not accounted for such inordinate delay.

For those reasons, I find that the grounds adduced in the applicant's affidavit and expounded in his submission in support of the application do not constitute good cause for extension of time.

The application is, accordingly, dismissed.



**W.P. Dyansobera**  
**Judge**  
**2.8.2022**

This ruling is delivered under my hand and the seal of this Court on this 2<sup>nd</sup> day of August, 2022 in the presence of the applicant but in the absence of the respondent.



**W.P. Dyansobera**  
**Judge**