

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

MISC. CRIMINAL APPLICATION NO. 09 OF 2022

(Arising from District Court of Karagwe at Karagwe in Criminal Case No. 39/2021)

WILBARD WILLIAM @GUMIKILIZA----- APPLICANT

VERSUS

THE REPUBLIC-----RESPONDENT

RULING

Date of Ruling: 01/07/2021

A.Y Mwenda, J

The Applicant has come before this Court with an application seeking leave to file a notice of appeal and an appeal out of time. This application is accompanied by his sworn affidavit drawn by himself.

In the said application the applicant stated that he, having been convicted and sentenced by the trial Court, lodged a notice of appeal at KAYANGA prison where he begun to serve his jail term but later he was transferred to KITENGULE Prison. He said his delay to lodge a notice of appeal and appeal in time was occasioned by reasons beyond his control.

When this Appeal came up for hearing the applicant appeared in person while for the respondent Republic, MR. EMMANUEL KAHIGI, learned State Attorney was in attendance. When invited by the Court to submit in support of his application, the

Applicant informed this Court that he has nothing to say rather that praying this court to adopt his reasons advanced in his affidavit for consideration.

On his part, Mr. EMMANUEL KAHIGI, learned State Attorney informed this Court that the Republic is in support of the applicant's Application. On so doing he advanced two reasons. One, that the applicant's transfer from KAYANGA Prison to KITENGULE was beyond his control and two, that the sentence of thirty years meted by the trial court against him demands scrutiny and assessment by this Court.

Having summarized the submissions by both parties, the issue for determination is whether the applicant advanced sufficient reasons for delay.

In his application, the applicant raised his transfer from KAYANGA Prison to KITENGULE as reasons for delay. This Court had sight of the applicant's affidavit and noted that the same was certified by KITENGULE Prison's In-charge. It has been a practice of this court that once a convict serving a jail sentence in prison alleges delay in an affidavit certified by the Prison's officer In-charge, then inference is drawn that what he claims is nothing but the truth. In the case of *JUMA ANACLETH V. THE REPUBLIC, CRIMINAL APPLICATION NO. 38 OF 2021* this court held:

"Since his affidavit is certified by the officer in-charge of Bukoba Prison, and since the reasons for his delay to file notice and memorandum of appeal is due to his transfer

*from NGARA to BUKOBA Prison, this court is of the view
that what is alleged in the affidavit is nothing but a truth
and was out of the applicant's Control."*

In the same footing, this court finds, for reasons advanced by the applicant, his delay was caused by reasons out of his control.

This application therefore succeeds and the applicant is ordered to file Notice and memorandum of appeal within 21 days from the date of this ruling.

It is so ordered.




A.Y. Mwenda

Judge

01.07.2022

Ruling delivered in chamber under the seal of this court in the presence of Mr. Wilbard William @ Gumikiliza the Applicant and in the presence of Mr. Emmanuel Kahigi learned State Attorney for the Respondent.




A.Y. Mwenda

Judge

01.07.2022