

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

AT BUKOBA

MISC. CRIMINAL APPLICATION NO. 02 OF 2022

(Arising from the District Court of Karagwe at Karagwe in Criminal Case No. 264/2020)

ROBERT MATHIAS----- APPLICANT

VERSUS

THE REPUBLIC-----RESPONDENT

RULING

Date of Ruling: 01/07/2021

A.Y. Mwenda, J

The Applicant has filed this 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. This application arises from the decision of KARAGWE District Court which convicted him to serve a term of 30 years for rape C/S 132 (1) (2) and 132 (3) of the Penal Code [Cap 16 R.E. 2019].

In the affidavit accompanying his application the applicant raised reasons for his delay to file notice and memorandum of appeal in time. He said, after being convicted and sentenced, he notified the prison authority that he is aggrieved and wish to appeal. Despite conveying this message to the prison authority, the same was not put in motion. He further stated that having spent ten (10) days in

KAYANGA prison, he was transferred to KITENGULE Prison before signing his notice. To him, these delays were caused by reason out of 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 had nothing to say, rather he prayed this court to take 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. He said the records are clear that the applicant after being convicted and sentenced, was transferred from KAYANGA Prison to KITENGULE prison. To him this transfer impaired him of his ability to lodge his notice and memorandum of appeal in time and this, he said, was out of his control.

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

Having considered the submissions by both sides and upon perusal of the court's records this court noted that after his conviction and the sentence, the applicant informed the prison authority of his intention to appeal. It is a trite practice that once a convict intends to appeal against his conviction and sentence his duty is to inform the prison authority and the rest such as paperwork and filing process is left for the prison's authority to undertake. In this application, the applicant blames

it to the prison authority for failure to undertake that important task and since this application is certified by the said authority this court draws inference that the applicant is telling 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."

From the foregoing observations this court is satisfied that the reasons advanced by the applicant are sufficient to warrant extension of time as 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. Robert Mathias the Applicant and in the presence of Mr. Emmanuel Kahigi learned State Attorney for the Respondent.




A.Y. Mwenda

Judge

01.07.2022