

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOKA DISTRICT REGISTRY

AT BUKOKA

MISC. CRIMINAL APPLICATION NO. 7 OF 2022

(Arising from Criminal Case No. 58 of Muleba District Court and Criminal Appeal No. 72 of 2021 High Court Bukoba)

FRANCES JOSEPHATAPPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

24/08/2022& 25/08/2022

E.L. NGIGWANA, J

This is an application for extension of time within which to lodge Notice of Appeal and an Appeal out of time against the decision of Muleba District Court in Criminal case No.58 of 2020 handed down on 23/12/2020.

The application is by way of Chamber summons made under the provisions of Section 361 (2) and 392 (A) of the Criminal Procedure Act, Cap 20 R: E 2019, now R:E 2022, and supported by an affidavit duly sworn by the applicant. The application is not opposed by the Respondent/Republic.

A brief background of this matter is to the effect that, the applicant was charged with for the offence of Rape contrary to section 130 (1) and (2) (e) and 131 (1) of the Penal Code Cap 16 R:E 2019 ,now R:E 2022.

The applicant denied the charge and as a result, the case proceeded to a full trial at which the court was satisfied that the case against the applicant

was proved beyond reasonable doubt, therefore he was convicted and sentenced to thirty (30) years imprisonment.

The applicant was aggrieved by the decision of the trial court and thus he appealed to the High Court. His appeal was registered as Criminal Appeal No.72 of 2021, but the same ended being struck out on 04/02/2022 after being found that it was out time. The court informed the applicant that he is at liberty to start appeal process afresh by lodging an application for extension of time hence, this application.

When the application was called on for hearing, the applicant who stood unrepresented urged the court to adopt his affidavit as part of his submission and grant the reliefs sought. He also raised the ground of technical delay.

The Respondent/Republic had legal services of Mr. Amani Kilua, learned State Attorney. In support of the application, Mr. Kilua prayed for the court to grant the application.

Now, the question for determination is whether the applicant has been able to advance sufficient reason(s) for the delay. It is a cardinal principle that where extension of time is sought, the applicant will be granted upon demonstrating sufficient cause for the delay whether actual or technical delay.

Conversely, it is also well settled that the sufficient cause depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware

that the delay is imminent or might occur. See decisions in the case of **Regional Manager TANROADS Kagera versus Rinaha Concrete Co. Ltd; Civil Application No. 96 of 2007 CAT, (unreported) and Godwin Ndeweri and Karoli Ishengoma versus Tanzania Indil Corporation (1995) TLR 200 and Republic versus Yona Kaponda and 9 others (1985) TLR 84.**

The applicant through his averment in paragraph 2 of the affidavit has advanced the reason for the delay being that, he prepared and signed his Notice of intention to appeal in time through Prison Officer who had the duty to forward the same to the High Court Registry, but the officer delayed to file the same, and that omission was out of his control. That, before filing the appeal in this court, he was transferred from Muleba Prison to Kitengule prison, and finally found himself out of time.

As already pointed out, Mr. Amani Kilua learned State Attorney for the Republic has no objection to the application by the applicant since the applicant has advanced sufficient reasons to warrant the grant of the prayer. Though this application is not supported by the supplementary affidavit of the Officer In charge of Kitengule or Muleba Prison, I am of the strong view that the omission has not affected the applicant's application.

I have also considered the question of technical delay which covers the time spent by the applicant prosecuting Criminal Appeal No.72 of 2021 which was struck out on 04/02/2022. It is apparent that this application was immediately filed, that is to say; on 14/02/2022.

Section 361 (1) of the Criminal Procedure Act of 20 R: E 2022 provides that;

"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 "

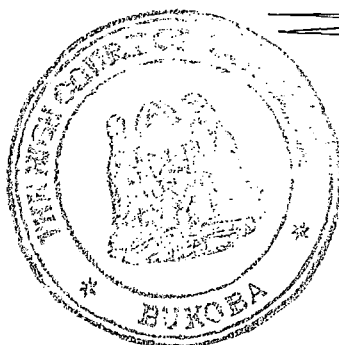
Section 361 (2) of the Criminal Procedure Act, Cap 20 R: E 2022 provides that;

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

With that view, I find that the applicant has advanced good cause for the failure to file the Notice of intention to appeal and an Appeal within prescribed period of time. For that reason, I allow the application. The applicant is given a period of ten (10) days from the date of this ruling within which to file the Notice of intention to appeal, as well as Twenty one (21) days within which to file petition of appeal to this court.

It is so ordered

Dated at Bukoba this 25th day of August, 2022.

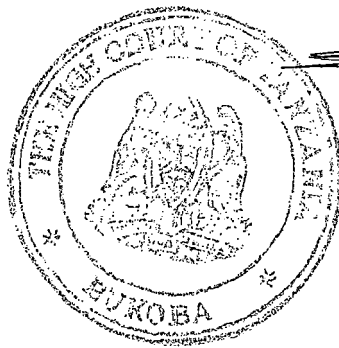


E.L. NGIGWANA

JUDGE

25/08/2022

Ruling delivered this 25th day of August 2022 in the presence of the applicant in person, Mr. Amani Kilua, learned State Attorney for the Republic, Hon. E. M. Kamaleki, Judges' Law Assistant, and Tumaini Hamidu, BC.



E.L. NGIGWANA

JUDGE

25/08/2022