

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO 16 OF 2022

(Originating from Criminal Case No. 10 of 2020 in the District Court of Kilwa at Masoko)

BONIFACE SAMWEL MKALINGA.....APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Muruke, J

Boniface Samwel Mkalinga was convicted and sentenced by the trial District court of Kilwa for the offence of rape c/s 130(i)(2)(e) and 131 (i) of the Penal Code Cap 16 R.E 2019 and, sentenced to thirty (30) years imprisonment on 23 November, 2020.

He has filed present application for extension of time within which to appeal. Same is supported by an affidavit sworn by himself. Reason for delay was sickness. Respondent did not file counter affidavit and on the date set for hearing, learned State Attorney did not object to the application for extension of time.

What applicant is requesting before this court, is extension of time to file appeal for him to be heard. The right to be heard is safeguarded in the constitution. Article 13(6) (a) of the constitution provides in the Kiswahili version thus;



“(6) Kwa madhumini ya kuhakikisha usawa mbele ya sheria, mamlaka ya nchi itaweka taratibu zinazofaa au zinazo zingatia misingi kwamba;”

“(a) Wakati wa haki na wajibu wa mtu yeyote vinahitajika kufanyiwa uamuzi wa mahakama au chombo kingine kinacho husika, basi mtu huyo atakuwa na haki ya kukata rufaa au kupata nafuu nyingine ya sheria kutokana na maamuzi ya mahakama au chombo hicho kinginecho kinachohusika.”

In the circumstances explained by the applicant in his affidavit that he was sick, there is no procedural abuse, more so, respondent will not suffer any prejudice as both will have right to be heard on intended appeal. I am unable to refuse extension sought. Thus, extension of time granted. Applicant to file his appeal within 45 days from 6th September 2022, and serve respondent accordingly.




Z. G. Muruke

Judge

06/09/2022.

Ruling delivered in the presence of Wilbroad Ndunguru State Attorney for the respondent, and applicant in person.




Z. G. Muruke

Judge

06/09/2022.