

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

MISCELLANEOUS CRIMINAL APPLICATION NO. 22 OF 2022

JUMA SALUM SANGA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Originating from the decision of Resident Magistrate Court of Iringa at
Iringa in Criminal Case No. 08 of 2021)**

RULING

Date of Ruling: 10.08.2022

S.M. KALUNDE, J.:

This is an application for extension of time within which to lodge a Notice of Appeal to appeal out of time; and petition of appeal out of time. The application is preferred under the provisions of section 361(2) of **the Criminal Procedure Act, Cap. 20 R.E. 2019** and supported by an affidavit dully sworn by the appellant.

The brief facts leading to the present application are that, before the Resident Magistrate Court of Iringa sitting at Iringa in Criminal Case No. 08 of 2021 the applicant was charged and convicted with the offence of transporting illegal immigrants contrary to section 46(1) of the **Immigration Act**. He was sentenced to pay Tshs. 20,000,000.00 or alternatively serve 20 years imprisonment. The impugned decision was delivered on the 07th day of June, 2021.

At the hearing before me the appellant appeared in person and unrepresented. Being a layman and self-confessed illiterate person, the appellant had nothing substantial to add to the contents of his affidavit which he requested to be adopted as part of his submissions. He requested the application be granted so that he can pursue his constitutional right of appeal to this Court.

The respondent, Republic was represented by **Ms. Jackline Nungu**, learned State Attorney who hastened to notify this Court that she was supporting the application on the ground that the application was competent and further that contents of the affidavit presented a genuine case for extension of time. She argued that after conviction and sentence and the subsequent transfer to several prisons, the applicant was at the mercy of prison officers to assist him in prosecuting his appeal. In absence of support from prison officers his chances to effectively prosecute the appeal were slimer. The counsel prayed the application be granted so that his appeal may be determined on merits.

The appellant right to appeal is stipulated under section 359 (1) of the CPA. However, for the applicant to exercise his right he must have complied with the mandatory provisions of section 361 (1) and (2) of the CPA which reads as follows:

"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.*" [Emphasis mine]**

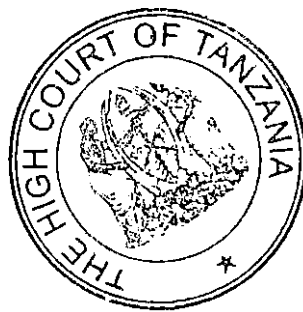
In the affidavit filed in support of the application, particularly paragraph 3, 4 and 5, the applicant deponed that he prepared the Notice of Appeal and relevant documents of appeal and lodged the same with the prison wardens. Immediately, thereafter he was transferred to Isupilo Prison and then Pawaga Prison. He was therefore not sure whether or not the prison wardens had lodged the documents. Apparently, he did not. On my part, I am satisfied that the appellant signified his intention to appeal to the prison wardens. That was far as he can do. He had nothing else he can do as it was the duty of the prison officer to transmit the Notice of Appeal and other relevant documents to this Court. The default of the prison officer to forward the Notice of Appeal to this Court constitutes a

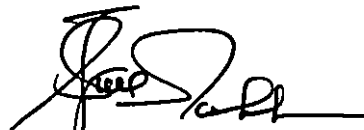
good and sufficient ground for extending the period of appeal I favour of the applicant. Under the circumstances, I find merit in the present application. Consequently, I proceed to grant the application.

That said, I order that the notice of appeal be lodged within ten days commencing today, and the memorandum of appeal be filed within thirty (30) days from obtaining copies of the judgement and proceedings of the decision sought to be challenged.

Order accordingly.

DATED at IRINGA this 10th day of AUGUST, 2022.




S. M. Kalunde

JUDGE