

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOKA DISTRICT REGISTRY

AT BUKOKA

MISC. CRIMINAL APPLICATION NO. 14 OF 2022

(Arising from Criminal Case No. 194 of 2019 of Bukoba District Court)

FRANCIS JOHN @ KIWIGIAPPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

01/09/2022 & 02/09/2022

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 Bukoba District Court in Criminal case No.194 of 2019 handed down on 16/10/2020.

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 2022, and supported by an affidavit duly sworn by the applicant. The application is supported by the respondent/Republic.

A brief background of this matter is to the effect that, the applicant was charged and convicted for the offence of Unlawful possession of prohibited plants contrary to section 11 (1) (d) of the Drug and Control Enforcement Act No. 5 of 2015.

It was alleged that on 10th day of July 2019 during noon hours at Mtukula area within Missenyi District in Kagera Region, the Applicant was found in

possession of Prohibited plants namely; *Catha edulis* (Mirungi) packed into 32 pockets commonly known as gomba.

The Applicant denied the charge; as a result, the case proceeded to a full trial at which the court was satisfied that the case against the applicant had been 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, though he neither filed the Notice of Intention to appeal nor an appeal to this court hence, this application.

The application was argued orally whereas the Applicant appeared in person, unrepresented while Mr. Amani Kilua, learned State Attorney appeared for the Respondent/Republic.

Submitting in support of the application, the Applicant adopted his affidavit and prayers on the chamber application to form part of his submission. The applicant stated that he failed to file both the Notice of intention to appeal and petition of appeal to this court owing to the reasons that were beyond his control. He further submitted that he prepared and signed his Notice of intention to appeal in time and prepared the memorandum of appeal processed through Prison Office which had the duty to forward the same to the High Court Registry, but the Officers delayed to file the same, and that omission was out of his control. He also stated that, during that time, movements of people were restricted from entering or getting of the prison due Covid 19 pandemic.

Having heard the applicant and the respondent, the issue for determination is whether the applicant has been able to advance sufficient reason(s) for the delay.

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."

It is a cardinal principle that where extension of time is sought, the applicant will be granted upon demonstrating sufficient cause for the delay.

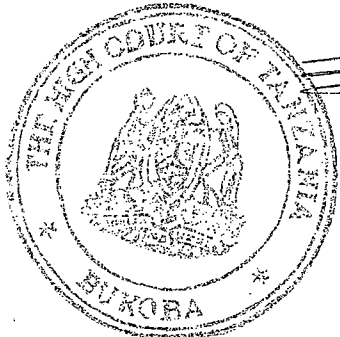
Conversely, it is also well settled that the sufficient cause depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent or might occur. See decisions in the case of **Regional Manager Tan roads 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.**

As already pointed out Mr. Amani Kilua, the Republic has no objection to the application by the applicant on the ground that the applicant has advanced sufficient reasons to warrant the grant of the prayer. I also shake hands with the learned State Attorney that the applicant has managed to demonstrate sufficient cause for the delay.

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 the petition of appeal to this court.

It is so ordered.

Dated at Bukoba this 2nd day of September, 2022.

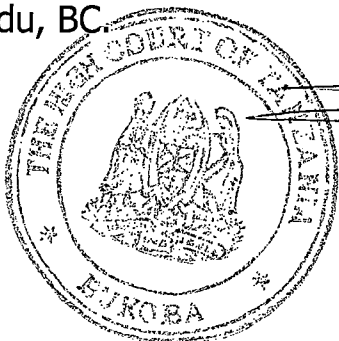


E.L. NGIGWANA

JUDGE

02/09/2022.

Ruling delivered this 2nd day of September 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

02/09/2022