

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IRINGA DISTRICT REGISTRY
AT IRINGA

MISCELLANEOUS CRIMINAL APPLICATION NO. 34 OF 2022

ERICK CHANAFI APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Originating from the decision of the Resident Magistrate Court of Njombe
at Njombe in Criminal Case No. 104 of 2020)**

RULING

Date of Ruling: 12.09.2022

S.M. KALUNDE, J.:

Before the Resident Magistrate Court of Njombe at Njombe (hereinafter "the trial court") in Criminal Case No. 104 of 2020 the applicant was convicted of the offence of rape contrary to sections 130(1) and 131(1) of **the Penal Code [CAP. 16 R.E. 2019]** now [CAP. 16 R.E. 2019]. He is aggrieved by the said decision and wishes to appeal to this Court. However, he is out of time in lodging the notice of appeal and the appeal. He has thus preferred the present application which contains the following prayers:

- (a) That, this Honourable Court be pleased to extend the time within which to lodge a notice of appeal and appeal out of time.

- (b) That, this Honourable Court be pleased to any other order deemed fit and just to grant.

The application is brought under the provisions of section 361(2) of **the Criminal Procedure Act [Cap. 20 R.E. 2022]**. In support of the application, the applicant swore an affidavit. Justifiably, the application has not been contested by **Ms. Pienza Nichombe** learned State Attorney representing the respondent. The reasons cited by the counsel for the respondent is that having duly lodged the Notice of appeal and the appeal itself to the prison officers the applicant, a prisoner and lay person, was at the mercy of the prison officers who were supposed to process the documents. However, they did not process the appeal as a result when his appeal finally lodged before this Court, the same was struck out for not being supported by a proper notice of appeal.

It is trite that under section 361(1) of the CPA a prisoner is only required to give a notice of his intention to appeal. in the present case he did so when he presented the same to the Prison Officer In charge. He could not be expected to do more than that. I say so because being in prison it is to be expected that every action, they take has to be through those under whose authority they are. When those people whom they are under their authority negligently or by oversight fails to transmit the relevant documents to the Court, prisoners should not be punished. This seems to be the view of the Court of Appeal in the case of **Kabira Sabilo & 2 Others v The Republic**, Criminal Appeal No. 191 of 2010 (unreported) where the Court (Kileo, J.A) drew inspiration in the

case of **Bhoke s/o Maneno@ Sigwa v. The Republic**, Criminal Application No. 3 of 2002 (unreported) and stated thus:

*"Inspiration on how to deal with an appellant who is in prison can also be drawn from the Court of Appeal Rules as observed by this Court (Munuo, J. A.), in MZA Criminal Application No. 3 of 2002- **Bhoke s/o Maneno@ Sigwa v. Republic**. In that case the learned justice of appeal observed:*

"It seems to me that that the above Rule envisage a situation, where, as is the case here, a prisoner gives Notice of Appeal, and, or memorandum of appeal, but the responsible prison officer negligently or by oversight fails to transmit it to the Court within time or at all. Although the Court of Appeal Rules do not apply to the High Court, the rationale behind Rule 68 would apply to all cases where a prisoner gives his notice of appeal but the prison officer defaults in transmitting the same to court."

Similarly in the case of **William Ndingu Alias Ngoso vs. Republic**, Criminal Appeal No. 61 of 2015, also unreported the court of Appeal (Juma, J.A as he then was) held:

"Prisoners serving time in prison invariably have no control over which place in Tanzania they serve their sentences. They similarly have no control over the dates and times they are brought to court to hear the outcomes of their appeals. They do what the prison authorities direct them to. Failure of the applicant to be

*in Mwanza to receive the judgment of his appeal on 18 May, 2005 was not of his own making. As the court said in **Alfred Mambya vs. Republic** the appellants serving time in prison received court orders through prison authorities."*

Guided by the above authorities I make a finding that there is "good cause" for this Court to exercise its discretion in granting the orders sought. Consequently, I proceed to grant the application. The applicant is to lodge the notice of intention to appeal within ten (10) days within from today. He is also granted twenty eight (28) days to file the intended appeal. The later period shall exclude the time required for obtaining copies of the impugned proceedings, judgment or order.

It is so ordered.

DATED at IRINGA this 12th day of SPETEMBER, 2022.




S. M. Kalunde

JUDGE