

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

MISC.CRIMINAL APPLICATION NO.15 OF 2022

(Arising from Criminal Case No. 162 of 2019 of Biharamulo District Court)

RABANUS FAUSTINE.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

03/10/2022 & 04/10/2022

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 Biharamulo District Court in Criminal Case No. 162 of 2019 handed down on 04/09/2019.

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 opposed by the respondent/ Republic.

A brief background of this matter is to the effect that, the applicant herein was charged with unnatural offence contrary to section 154 (1) (a) of the Penal Code Cap 16 R.E 2019 ,Now R.E 2022.

It appears that when the charged was read over to the applicant, he pleaded guilty to it therefore; he was convicted upon his own plea of guilty and sentenced to thirty (30) years imprisonment.

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 was aggrieved by conviction and sentence but he was late to file the Notice of intention to appeal and an appeal on time because right after being sentenced, he was transferred from one prison to another, to wit; From Biharamulo Prison to Bukoba Prison, then from Bukoba to Butimba Prison and from Butimba to Iringa Prison, Pawaga and Isupilo. He added that he was not supplied with the court proceedings on time. He stressed that he failed to file both the Notice of intention to appeal and an appeal to this court owing to reasons that were beyond his control. He ended his submission urging the court to grant this application

On his side, Mr. Amani Kilua conceded to the applicant's application on the ground that the applicant has advanced sufficient reasons to warrant the grant of the prayer.

Having heard the applicant and Mr. Kilua for 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 an application for extension of time is entirely in the discretion of court to grant or refuse extension of time. However, extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause.

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 **Republic versus Yona Kaponda and 9 others** (1985) TLR 84.

A prisoner like the applicant herein is not a free agent who can freely make follow-ups on his matter or do what he/she wants to do without restrictions. In the case of **Kabisa Sabiro and Two others versus Republic**, Criminal Appeal No. 191 of 2010 CAT (Unreported), it was held that;

"The appellants being in prison, it is to be expected that every action they take has to be through those under whose authority they are."

The Court of Appeal further held in case of **Shija Marko versus Republic**, Criminal Appeal No. 246 of 2018 CAT (Unreported) that;

"Transfer of a prisoner from one prison to another has been considered by the Court to be a reason for constituting good cause for extension of time".

See also **Renatus Muhanje versus Republic**, Criminal Appeal No.417 of 2016 and **Mwita Mataluma Ibaso versus Republic**, Criminal Appeal No.06 of 2013 CAT (Both unreported). In the matter at hand, the applicant has submitted on how he was transferred from one prison to another. Being guided by the herein above cited authorities, I shake hands with the learned State Attorney that the applicant has managed to demonstrate sufficient cause for the delay. It is apparent that the reasons for the delay were beyond his control.

In the event, 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 to challenge the decision of Biharamulo District Court in Criminal Case No 162 of 2019 handed down on 04/09/2019.

It is so ordered.

Dated at Bukoba this 4th day of October, 2022.

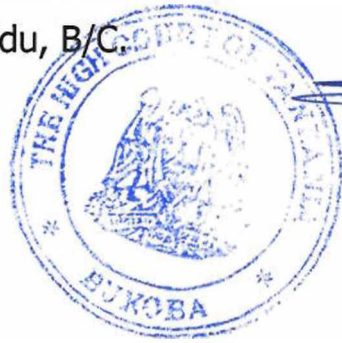


E.L. NGISWANA

JUDGE

04/10/2022.

Ruling delivered this 10th day of October, 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 Ms. Tumaini Hamidu, B/C.




E.L. NGIGWANA

JUDGE

04/10/2022