

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

MISC. CRIMINAL APPLICATION NO. 34 OF 2022

(Originating from Songea District Court in Criminal Case No. 41 of 2021)

LUCAS MWAKISAMBWE APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

19/10/2022 & 26/10/2022

U.E Madeha, J.

The Applicant, Lukas Mwakisambwe, was convicted by the District Court of Songea for the offence of rape contrary to sections 130 (2) (e) and 131 (1) of the Penal Code (Cap. 16, R.E. 2019). He was sentenced to serve thirty (30) years of imprisonment. The Applicant was aggrieved by the conviction and sentence meted out against him by the trial court. The Applicant lodged this application to this Court praying for an extension of time to file a notice of appeal and appeal out of the time prescribed by law.

Notably, at the hearing of the application the Applicant defended himself whereas, the Respondent was represented by none other than Ms. Tumpale Laurence the Senior State Attorney.

On the same note, the Applicant submitted that he was convicted on 3rd June, 2022. In that regard, he filed a notice of intention to file an appeal on the 5th June, 2022. Basically, this was two (02) days after he had been convicted and sentenced. Furthermore, he submitted that the appeal was struck out for having the defect in the notice of intention to appeal. He filed his notice of intention to appeal in the subordinate court "titled" the name of the subordinate court" instead of the High Court.

To put it in a nutshell, based on the above irregularities, the appeal was struck out, hence this application for the extension of time to file the notice of the intention to appeal and the appeal out of time. Based on the above arguments, the Applicant prayed for his application for the extension of time to file the notice of intention to appeal and appeal to be granted.

It is worth considering that, subsequent to the trucking out of the said appeal containing the defective notice of intention to appeal, the Applicant filed a chamber application supported by his sworn affidavit seeking an

extension of time in which to lodge the notice of appeal and definitely appeal out of time. On the other hand, the Respondent's learned State Attorney had no objection to the prayers made by the Applicant.

It is important to note that, the Court is convinced that the Applicant had adduced genuine and sufficient reasons that he filed his appeal on time but unfortunately the appeal was struck out due to the defectiveness of the notice of intention to file appeal. That is why he filed an application for extension of time to file the notice of intention to appeal and appeal.

Thus, I entirely agree with the Applicant that he was prompt and diligent, which is a sufficient reason to use the Court's discretion to grant the extension of time. Based on the foregoing, I find and hold that the applicant has explained sufficiently the reasons for the delay in filing the notice of intention to appeal and appeal.

Therefore, this application for an extension of time so as to file the notice of intention to appeal and appeal is granted. The Applicant has to file a notice of intention to appeal and appeal within ten (10) days after being provided with a copy of this ruling. Order accordingly.

DATED and **DELIVERED** at Songea this 26th day of October, 2022.



U.E MADEHA

JUDGE

26/10/2022

