

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

MISC. CRIMINAL APPLICATION NO. 29 OF 2022

(Originating from Mbinga District Court in Criminal Case No. 65 of 2019)

MODESTUS SAMWELI KAWONGA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

19/10/2022 & 26/10/2022

U.E Madeha, J.

The Applicant, Modestus Samweli Kawonga was convicted by the District Court of Mbinga for the offence of rape contrary to sections 130 (2) (e) and 131 (1) of the Penal Code (Cap. 16, R.E. 2022). He was sentenced to thirty (30) years imprisonment. In that regard, the Applicant was aggrieved by the conviction and sentence meted out against him by the said trial Court.

Therefore, he lodged an application for an extension of time to file an appeal at the High Court, Songea Registry. However, the application was

struck out since it was supported by a defective affidavit. Subsequent to the striking out of the said application, which contained a defective affidavit, the applicant filed a chamber application supported by affidavit seeking an extension of time in which to lodge the notice of appeal and appeal out of time.

At the hearing of the application, the Applicant had no representation whereas, the Respondent enjoyed the service of none other than Ms. Tumpale Laurence the Senior State's Attorney for the Republic.

It is worth considering that the applicant submitted that he was convicted on June 3rd June, 2020. He filed an appeal within time. However, the case record was remitted to the trial Court for the conviction order because there was no conviction order. He asked the court to extend the time to appeal beyond the time limit. Basically, the applicant continued to argue that he had appealed on time. However, while in prison, the prison officer delayed to file his grounds of appeal to the court. On the same note, he had to ask for an extension of time to appeal. Furthermore, he averred that, as a prisoner, he had faced trouble in filing his appeal because his grounds of appeal were prepared by prison officers who failed to file the petition of appeal timely. It is from those reasons that he prayed for the

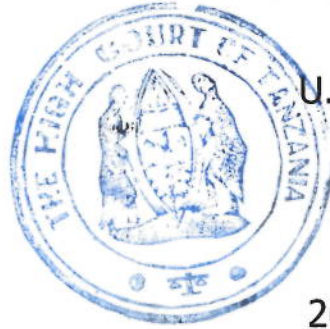
for the extension of time to be granted. On the other hand, the Respondent's learned State's Attorney had no objection to the prayers made by the applicant.

Having gone through the supporting affidavit and the submissions made by the Applicant, this Court is convinced that the applicant has adduced genuine and sufficient reasons. In that regard, the prison officers were late in filing his grounds of appeal. I have checked the case records of the District Court and found that the applicant appealed within the time limit. The reason as to why his appeal was not heard was none other than that the trial Magistrate had not placed an order for the conviction. Another reason is that, as a prisoner, he filed his notice of appeal and petition of appeal through the prison officer within the time limit, but the prison officers were late in filing them in Court. This is why his appeal was out of the prescribed time limit. Thus, I entirely agree with the applicant that he has raised sufficient grounds that the Court should use its discretion to grant the extension of time.

Based on the foregoing, I find and hold that the applicant has explained why he delayed in filing the intended appeal. Therefore, I hereby grant the prayer and extend the time to file his notice of intention to file an

appeal and petition of appeal within ten 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