

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA

MISC. CRIMINAL APPLICATION NO. 16 OF 2022

(Arising from the District Court of Ngara at Ngara in Criminal Case No. 77 of 2019)

ERICK HIGILUKWISHAKA ----- APPLICANT

VERSUS

THE REPUBLIC ----- RESPONDENT

RULING

Date of Ruling: 03.11.2022

A.Y. Mwenda, J.

Before this court is an application for extension of time to file notice of intention to appeal and appeal out of time. It is brought under section 361(2) of the Criminal Procedure Act [CAP.20 R.E 2019]. It is also supported by an affidavit sworn by the applicant.

During the hearing of this application the applicant appeared in person without legal representation while the respondent (Republic) was represented by the learned Senior State Attorney Ms. Magili.

When invited to submit in support of his application, the applicant submitted that he has nothing to add. He just prayed this court to adopt the contents of his affidavit to form part of his submissions.

On the other hand, the respondent republic did not oppose this application. Ms. Magili, learned state attorney submitted that, having gone through the

applicant's application and the reasons for the delay as covered in the affidavit, she is satisfied that there are sufficient reasons to grant extension of time. She thus prayed this application to be granted.

Having heard the submissions by both parties, the issue is whether or not the applicant has advanced sufficient reasons for the delay.

From the records, the applicant through his affidavit stated that after being convicted and sentenced by Ngara District Court he notified the prison authority on his intention to appeal against the said decision. He stated that within 10 days after he was admitted at Ngara prison to serve his prison sentence, he was transferred to Bukoba prison and later to Iringa prison. He stated that he was transferred without signing the notice of intention to appeal hence he found himself out of statutory time. He concluded his submission stating that the delay is out of his control and as such he prayed this application to be allowed.

Having gone through the applicant's affidavit, this court noted that the same is certified by the officer in charge of Bukoba prison. Since this affidavit is certified by the officer in charge of Prison, this court therefore is of the view that what is stated in the said affidavit is nothing but the truth and therefore the delay was out of the applicant's control.

That being the case, this court finds merits in the applicant's application and the prayers craved are hereby granted.

The applicant is thus ordered to file notice of intention to appeal and memorandum of appeal within 21 days from the date of receipt of this ruling.

It is do ordered.




A.Y. Mwenda

Judge

03.11.2022

This ruling is delivered in chamber under the seal of this court in the presence of the applicant and in the presence of Ms. Phoibe Magili learned state attorney for the republic.




A.Y. Mwenda

Judge

03.11.2022