

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 24 OF 2022

(Originating from the Resident Magistrate Court of Katavi in Criminal Case No. 75/2021)

UWEZO S/O MUSA APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

06/12/2022 & 06/12/2022

MWENEMPAZI, J.

The applicant was convicted of the offence of rape contrary to section 130(1) (2) (a) and 131(1) of the Penal Code, Cap 16 R.E 2019. He was sentenced to serve a term of thirty (30) years imprisonment as a minimum statutory sentence for the offence charged and on top of that to suffer twelve strokes of cane in his buttocks and he is also required to compensate the victim with Tanzanian shillings one million (Tshs. 1,000,000/=).

The decision of the trial Court was delivered on the 24th February, 2022. The applicant was immediately aggrieved by the decision and filed a

notice of intention to appeal under section 361 of the Criminal Procedure Act on the 28th February, 2022. He could not, however lodge the petition of appeal within forty-five (45) days as required by section 361(1) (b) of the Criminal Procedure Act, Cap 20 R.E 2022. Hence he has made this application under section 361(2) of the Criminal Procedure Act, Cap 20 R.E 2022.

The application is supported by two affidavits, sworn by Uwezo s/o Musa, the applicant herein and Asp. Augustino Francis Sabula, Officer incharge of Mpanda Remand prison. The applicant has stated in his affidavit that the reason attributed to his delay was Mpanda Remand Prison authority who failed to comply with section 361(1) (b) of Criminal Procedure Act due to lack of computer machine as the available one was broken at the time. The officer incharge of the Mpanda Remand Prison has confirmed the averment by the applicant.

At the hearing the applicant was unrepresented and he stated that his application be received and considered in his favour. The Respondent was represented by Mr. John Kabengula, State Attorney who submitted that an appeal is a constitutional right. Taking into consideration the applicant was confined in the prison, they do not object to the application.

I have considered the circumstances the applicant was in, I am satisfied he did what he could in his capacity; only stumbled for lack of tools, as sworn by himself and the officer incharge to enable him present a typed petition of appeal on time. For that matter the applicant has adduced sufficient reasons to extend time so as to enable the applicant to lodge the appeal out of time. The application is therefore granted. It is further ordered that the applicant should lodge his petition of appeal within forty-five (45) days from the date of this ruling and or order.

It is ordered accordingly.

Dated at Sumbawanga this 6th December, 2022.




T.M. Mwenempazi

Judge

06/12/2022